Advocates for the Arts: A Legal Handbook for the Creative Industries is a publication of Law Society Pro Bono Services, which aims to provide bite-sized information on various common legal issues faced by members in the creative industries.

While there can be no substitute for obtaining face-to-face and bespoke legal advice where required, Law Society Pro Bono Services, as part of its initiative to raise legal awareness amongst the public, hopes that this handbook will serve as a useful resource on basic legal issues, to anyone in or related to the creative industries. Put another way, it's not about knowing all the answers to all the questions all the time, but, rather, about knowing the right questions to ask and being aware of potential pitfalls. Advocates for the Arts aims to empower readers by equipping them with a broad understanding of the legal issues they may encounter in their creative pursuits. It covers a whole range of topics, including contracts, employment, intellectual property, limits to creative expression, amongst others, which were identified based on feedback and input from the creative community.

The chapters in this handbook have been contributed on a pro bono basis by lawyers with deep knowledge of the applicable areas of law, together with input from relevant specialized agencies.

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ADVOCATES FOR THE ARTS: A LEGAL HANDBOOK FOR THE CREATIVE INDUSTRIES

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Advocates for the Arts

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Foreword by Law Society Pro Bono Services

Dear reader, you hold in your hand a slim book with a broad aim: it is a legal guide for those who make their living in the creative industry.

Over the past few years, we in the Law Society of Singapore (the "Law Society") have been meeting groups and individuals who play a part in producing music, literature, drama and art for all of us in Singapore. These people dedicate their lives to enriching the lives of all Singaporeans: they document our memories, they capture our moods, they define what it is to be Singaporean. Their ideas, spirit and skill inspire us, and make us proud to be part of this island.

The creative process begins with the romance of conceiving an idea, and ends with the birth of an artistic work. The period of gestation may be easy for some, and difficult for others. The reason? Sometimes, artists do not know what to expect. Or, they face people who do not behave as expected. Time and time again, the people we met told us how they were exploited. Freelancers were especially vulnerable to incidents of unfair treatment. Gradually, we formed the strong impression of our mission. We needed to impart a better understanding of how the law protects rights and promotes fair dealing. We needed to show how the legal system provides the creative community with a firm, safe scaffolding to support their endeavours.

The Law Society resolved to set up the Advocates for the Arts: an initiative to empower the creative community by informing them of their legal rights. We resolved to publish a handbook that would be useful to anyone making a living in the artistic community in Singapore.

We then met numerous arts groups, administrators and businesses to learn about the needs of the creative sector. We approached public-spirited Singapore law firms, who enthusiastically agreed to contribute important chapters in the handbook. We told Colin Goh, the beloved cartoonist, entrepreneur and (yes!) lawyer, about our handbook, and he generously agreed to provide illustrations for us.

Thanks to all these contributors, you now have in your hand a unique publication: a legal text for artists and those who give us art. It expresses legal concepts simply and clearly. It provides practical information for the individual and the organisation, ranging from maternity benefits and insurance to templates to enable the reader to put together a do-it-yourself contract. Our legal toolkit is made available to you free of charge, as a service by the Law Society to the greater society of Singapore.

Mr Adrian Tan
Vice President
The Law Society of Singapore

Foreword by National Trades Union Congress

The "Advocates for the Arts" is an invaluable legal toolkit for individuals employed in or seeking a career in the creative industries and it cannot be more timely. The number of working people in the Arts, Entertainment and Recreation Industry has been increasing significantly over the years. As of last year, the total number of working people in the Arts, Entertainment and Recreation Industry was 40,400; an increase of 3,400 from the previous year. With the Singapore government promoting the shift to a high-tech creative economy in sectors such as animation, game design, industrial design, creative agencies, sports and lifestyle, we can expect progressive increases in the number of working people embarking on a career in the creative industries.

This emerging sector not only offers employment opportunities to the working populace but also opportunities to entrepreneurs seeking to become pioneers in their own right. Singapore's robust Intellectual Property Framework has provided a safe haven for producers, creators and intellectual property owners. It has also been critical in promoting and elevating the Cultural and Creative Industries.

With the mechanisms in place advancing the creative industries, the only lacuna is a concise, easily understandable and practical guide to the law for the creative community and this legal toolkit more than adequately fills this space. The "Advocates for the Arts" is the handbook to go to for both employers and employees. It enlightens as well as empowers the reader by capturing difficult legal concepts such as intellectual property in a form that is palatable and easily digested by the layman. A very useful and practical section is the one on "do-it-yourself" contract templates.

I am delighted that the Law Society Pro Bono Services has published this much-needed legal handbook for the creative community. Its very essence and appeal are in its simplicity and clarity which make reading the law and legal concepts a painless and even an enjoyable experience.

Mr Patrick Tay, BBM
NTUC Assistant Secretary-General
Member of Parliament for West Coast GRC (Boon Lay)

CHAPTER 1
INTRODUCTION

The creative sector is a vital part of Singapore society, enriching our lives directly and even in ways that are intangible. For example, the arts promote Singapore as a dynamic and vibrant place to live and work, hence distinguishing it from other cities in the region. This has been one of the most important aims of the Renaissance City Plan, an arts and cultural master plan launched in 2000 by the Government.

The arts can also articulate our national narrative, and stimulate critical debate and reflection, hence encouraging a reflective and engaged citizenry. For example, Singapore's Golden Jubilee year saw many plays that explored local identity and history, thereby exploring and celebrating what it means to be Singaporean. Establishing Singapore as an "Endearing Home" is also one of the key thrusts of the Arts and Culture Strategic Review, which was initiated in 2010 and plots Singapore's cultural road map up till 2025.

Encouragingly, in economic terms, the cultural sector has been on an upward trajectory over the years. Total nominal value-added of the arts and cultural sector has increased steadily from about $922 million in 2003 to almost $1.7 billion in 2014 (Ministry of Culture, Community and Youth. *Singapore Culture Statistics*. Singapore: Ministry of Culture, Community and Youth; National Arts Council; National Library Board; National Heritage Board; People's Association, 2016. Print, 76). As audiences, Singaporeans have also been more engaged in the arts. Nearly eight (8) in ten (10) Singaporeans or Singapore permanent residents went for a show or an event, or visited a museum or gallery in 2015 (National Arts Council. *Population Survey On The Arts 2015*. Singapore: National Arts Council, 2016. Print, 12). To ensure that the creative industries continue to flourish and that arts consumption continues to grow, one important step is to protect the rights of artists and arts companies as well as their creative content. This will enable creators to work more efficiently and wisely, better monetise their work, and concentrate on creating original and compelling content.

However, stories of plagiarism, payment failures and contractual disputes are familiar in the industry. Freelance creative workers are an



"Sorry, Ah Long, but while I personally prefer your more dramatic and theatrical approach, but I'm afraid I'm awarding my debt recovery work to Oh, Mah, Nee & Partners."

especially vulnerable group of practitioners. They provide a service on their own account and at their own risk. As contract staff, they do not receive the benefits of the employment laws, such as their Central Provident Fund ("**CPF**"), healthcare, leave benefits and retirement coverage. They are also often unsure about what their rights are in the case of disputes.

Over the years, there have been efforts to help freelance arts workers and arts organisations better understand the legal foundations of their industry and to better protect their interests. For example, National Trades Union Congress ("**NTUC**") has done its part to equip freelancers with knowledge of their rights and obligations through its e-pocket booklet, legal clinics, Workplace Advisory app and U-dialogue business workshops.

A resource that provides insight into the legal underpinnings of the creative industry, is another step in this direction. The contents of this handbook can apply to both solo freelance practitioners and larger collectives or organisations in the arts, across theatre, dance, visual arts, literary arts, music, design and media.



"Ha? Must pay you, meh? You say you freeluncher, so I thought only need to buy you lunch."

By providing useful information, resources and experiences, this handbook aims to serve the needs of freelance creators, organisations who employ these freelancers, as well as anyone who wants to gain a better understanding of the legal principles governing the creative industries.

There are currently no definite figures on the number of freelancers in the creative industry here, although there are broader statistics on self-employment.

On February 7, 2017, in response to a parliamentary question on the support of freelancers from MP Desmond Choo, Manpower Minister Lim Swee Say said there are some 180,000 primary freelancers in Singapore who operate their business without hiring a paid worker (Ministry of Manpower, 2017). He added that primary freelancers make up 8 per cent of employed residents here. What we know for sure is that the proportion of freelancers in the creative industries is significantly higher than the national average. Freelancers make up almost half of the people working

in Singapore's arts and culture sector (National Arts Council, 2017), compared to just eight (8) per cent of the general workforce in Singapore. Therefore freelancing is a key feature of the arts landscape here.

Freelancers, their clients, as well as larger arts organisations, will all benefit from having a sourcebook of legal terms, principles and processes related to their industry. This will result in a creative class being more aware of its legal rights and responsibilities, and making more confident and informed decisions, which will in turn contribute to a mature and dynamic arts scene.



"I like artistic clients because I think I'm pretty creative myself.
This is a gallery of some of my most creative clauses and arguments..."

CHAPTER 2
EMPLOYMENT ISSUES

"Throw yourself into some work you believe in with all your heart, live for it, die for it, and you will find happiness that you had thought could never be yours."

– Dale Carnegie

Overview

This Chapter aims to provide individuals and employers with a broad overview of employment law in Singapore. It will highlight the key obligations owed by employers to their employees and address common issues that employees may face in the course of their employment.

What are the Sources of Employment Law?

In Singapore, the key statutes governing employment law include:

1. Employment Act (Cap. 91, 2009 Rev. Ed. Sing.);
2. Employment of Foreign Manpower Act (Cap. 91A, 2009 Rev. Ed. Sing.);
3. Central Provident Fund Act (Cap. 36, 2013 Rev. Ed. Sing.);
4. Industrial Relations Act (Cap. 136, 2004 Rev. Ed. Sing.);
5. Personal Data Protection Act 2012 (Act 26 of 2012);
6. Retirement and Re-employment Act (Cap. 274A, 2012 Rev. Ed. Sing.);
7. Trade Unions Act (Cap. 333, 2004 Rev. Ed. Sing.);
8. Work Injury Compensation Act (Cap. 354, 2009 Rev. Ed. Sing.); and
9. Workplace Safety and Health Act (Cap. 354A, 2009 Rev. Ed. Sing.).

The Singapore Courts will also refer to Singapore case law, English case law where Singapore legislation is similar to English statutes, English common law and equity, and Commonwealth case law from Malaysia, Hong Kong, Australia and New Zealand, especially where Singapore statutes are based on or adapted from such jurisdictions.

Tripartite Guidelines

The Ministry of Manpower of Singapore ("**MOM**"), NTUC and Singapore National Employers Federation ("**SNEF**") have also released various tripartite guidelines governing Singapore employers and employees. While these

guidelines do not have the force of law, they may eventually be adapted to legislation. The tripartite guidelines also provide a basis for mediation and adjudication of employment disputes. The Commissioner for Labour and the Industrial Arbitration Court will take reference from these guidelines in settling employment claims and appeals. Some key examples of these guidelines are:

1. Tripartite Guidelines on Fair Employment Practices;[1]
2. Tripartite Advisory on Flexible Work Arrangements;[2]
3. Tripartite Guidelines on Managing Excess Manpower;[3] and
4. Tripartite Guidelines on the Re-employment of Older Employees.[4]

What Is the Difference Between a Freelancer and an Employee?

Contract for service vs Contract of service

A preliminary question in determining your rights and obligations in the course of your work, including whether you are covered under the Employment Act, is whether you are an employee or an independent contractor – otherwise known as a "freelancer". A contract of service defines the employer-employee relationship and sets out certain terms and essential clauses, including key employment terms, which will be covered later in this Chapter.

In contrast, a contract for service is between a client and an independent contractor (or self-employed person), wherein the client engages the independent contractor to provide certain services. This distinction is important as an independent contractor is not protected by the provisions of the Employment Act. Some key factors that would indicate an independent contractor relationship as opposed to an employment relationship include instances where the person engaged to provide a service:

- is responsible for the production process, timing and method of production;
- owns the tools and the equipment for the factors of production;
- is not provided with a working place and materials;
- carries on business on his or her own account instead of for an employer;

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1. Tripartite Alliance for Fair & Progressive Employment Practices, *Tripartite Guidelines On Fair Employment Practices*. Singapore: Tripartite Alliance for Fair & Progressive Employment Practices, 2014. Print
2. Tripartite Committee on Work-Life Strategy, *Tripartite Guidelines on Flexible Work Arrangements*. Singapore: Ministry of Manpower, 2014. Print
3. Ministry of Manpower, National Trades Union Congress, Singapore National Employers Federation, *Tripartite Guidelines on Managing Excess Manpower*. Singapore: Singapore National Employers Federation, 2009. Print
4. Tripartite Alliance for Fair & Progressive Employment Practices, *Tripartite Guidelines on the Re-employment of Older Employees*. Singapore: Tripartite Alliance for Fair & Progressive Employment Practices, 2017. Print

- is liable for any risk of loss;
- is not bound by working hours and does not have leave benefits; or
- is paid upon completion of a project.

There is no conclusive test to identify whether a contract is one "for service" or "of service", and an employer cannot rely on a contract labelled "for service" when in substance the contract is an employment contract. If an employer incorrectly characterises an individual as an independent contractor when that individual is an employee, that employer may be penalised.

Under a contract for service, an individual who is self-employed is not covered under the Employment Act and the Work Injury Compensation Act. Such an individual is not entitled to any statutory benefits such as overtime pay and rest day, and does not have mandatory employer CPF contributions.

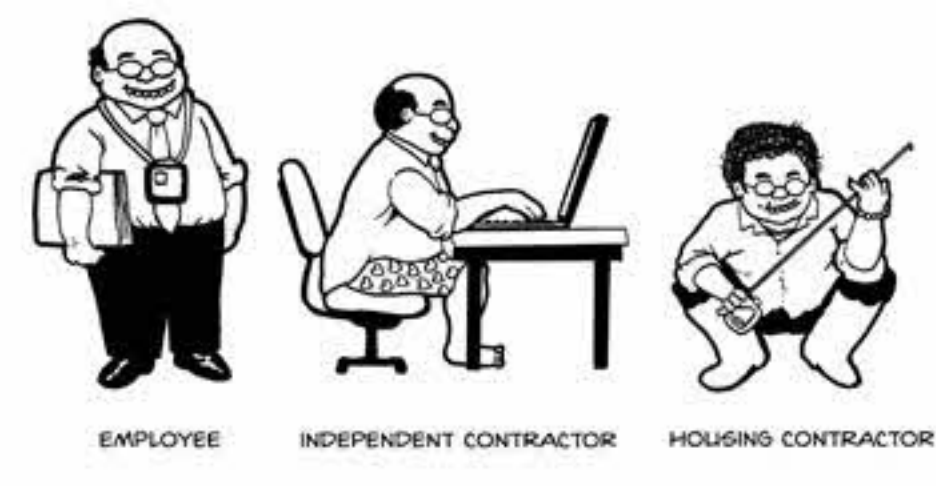
Query: *Can a production house not pay a writer if that writer does not follow a new schedule set by the production house?*

Answer: If the writer is an employee of the production house and is covered under the Employment Act, the production house is bound to pay the writer's salary in accordance with the employment contract. The terms of payment may include performance targets such as conforming to the production house's writing schedule. If the writer is an independent contractor, the contractual terms between the production house and the independent contractor would determine whether the production house is required to pay the writer.

What about CPF and Taxation for Freelancers?

CPF

Self-employed persons (such as independent contractors) earning an annual net trade income of more than S$6,000 are not required to make any CPF contributions, except to their CPF Medisave account at the prevailing mandatory rate. Any additional voluntary contributions to an individual's CPF Medisave account may be claimed as tax relief in the following year of assessment.



Query: *Why aren't freelancers entitled to CPF if they are required to work at a client's office a certain number of hours a week? After all, the same freelancer would receive CPF from an educational institution if he or she was teaching a course for a set number of hours during a semester.*

Answer: The nature of the contractual relationship (i.e. whether an individual is considered an independent contractor or an employee) would depend on the facts in each instance. An individual conducting a course in an educational institution may be characterised as an employee instead of a self-employed person, in particular if that individual is not responsible for providing the teaching materials for a particular course, and is bound by fixed working hours. That same individual providing services at a client's office for a fixed number of hours a week may be characterised as an independent contractor instead of an employee, if that individual provides the necessary materials for the production of work, and is liable for any losses arising from the work produced for the client.

The entitlement to CPF flows from the nature of the contractual relationship, and mandatory contributions from an employer only arise from an employer-employee relationship.

Tax

A self-employed person is liable for income tax under the Income Tax Act (Cap. 134, 2014 Rev. Ed. Sing.) for the gains or profits from a trade, business, profession or vocation. Self-employed persons carrying on a trade or business may be allowed tax deductions from their income generated, reducing the total "taxable income" of that individual. These include expenses that are wholly and exclusively incurred in the production of income (unless prohibited under the Income Tax Act), including costs of staff and bad debts. Expenditure for the acquisition of assets for the purposes of one's trade, profession or business, such as intellectual property rights, may be set off against income derived from the utilisation of such assets.

In Singapore, income tax is assessed on a preceding year basis for each year of assessment. For an individual, this means that income tax payable in 2018 would refer to that individual's income earned in the calendar year 2017. If notified, taxpayers are required to file a tax return with the Inland Revenue Authority of Singapore ("**IRAS**"), and IRAS will subsequently issue a notice of assessment setting out the details of income tax payable and the terms of payment. The taxpayer must ensure that the information provided to IRAS is correct, or risk facing a fine or imprisonment.



"Chope! Is our work considered 'employment' or 'work for hire'?"

What are the Key Employment Issues and Obligations?

The Employment Act – who is covered?

The Employment Act is Singapore's main statute for employment or labour law. It applies to all employees of any nationality, except for seafarers, domestic workers, civil servants, and statutory board employees. The Employment Act also does not apply to any person employed in a managerial or an executive position with a monthly basic salary of at least S$4,500.

Employees in a managerial or executive position ("**PMEs**") typically have supervisory or executive functions, where their duties and authority may include decisions on recruitment, discipline, termination of employment, assessment of performance and reward, the formulation of strategies and policies of the enterprise, and the management and running of the business. Professionals with tertiary education and specialised knowledge or skills whose employment terms are similar to those of managers and executives also fall within this category of employees. While PMEs are not covered under the Employment Act, those earning a basic monthly salary of up to S$4,500 are covered under the general provisions of the Employment Act, which include sick leave benefits and protection against unfair dismissal. PMEs are not covered under Part IV of the Employment Act (see below for an explanation of Part IV of the Employment Act).

The employment of part-time employees (i.e. employees required to work less than 35 hours a week) is regulated further by the Employment (Part-Time Employees) Regulations (Cap. 91, Section 66B, 1997 Rev. Ed. Sing.).

What Needs to be Included in a Written Employment Contract?

Where employees are covered by the Employment Act and are employed for 14 days or more (in terms of the length of contract), employers are required to issue certain key employment terms in written employment contracts within 14 days from the start of employment. These terms include:

- Name of employer and employer's trade name (if different);
- Name of employee;
- Job title and description of main duties and responsibilities;
- First day of period of employment;
- Duration of employment (for employees on fixed term contract);
- Working arrangements (e.g. daily working hours, number of working days per week and rest days);
- Salary period;
- Basic rate of pay;

- Any fixed allowances during each salary period (if applicable);
- Any fixed deductions during each salary period (if applicable);
- Payment period for overtime pay (if different from salary period);
- Rate of overtime pay;
- Any other salary-related components (e.g. bonus or monetary incentive) (if applicable);
- Leave entitlements (e.g. annual leave, sick leave, maternity leave, paternity leave and childcare leave);
- Medical benefits (e.g. medical or health insurance or dental benefits);
- Probation period (if applicable); and
- Notice period for dismissal by employer or termination of employment contract by employee (as the case may be).

General Duty of Trust and Confidence

A general obligation, one which is required if the employment relationship is to continue, is a duty of mutual trust and confidence between the employer and the employee. An employer and an employee must conduct himself or herself in a manner that would not prejudice their relationship of trust and confidence. This could, for example, mean that the employer is under a general obligation not to act in a corrupt manner which would adversely affect the employee's future job prospects.

What are Some of Your Employer's Obligations?

Part IV of the Employment Act (rest days, overtime, and annual leave)

Part IV of the Employment Act provides for rest days, hours of work, annual leave, retirement benefits, and other conditions of service. Workmen (i.e. employees whose work involves mainly manual labour) who earn up to S$4,500 a month, and employees other than workmen who earn up to S$2,500 a month, are covered by Part IV of the Employment Act, in addition to the general provisions of the Employment Act. The provisions applicable to the employment of such employees are set out in greater detail below.

Rest days

One (1) day each week must be a rest day without pay. While this day is generally Sunday, the employer can determine otherwise from time to time. The rest day for an employee engaged in shift work may be a continuous period of 30 hours.

The rate of pay for work done on a rest day is set out in Table 1.

Table 1. Rate of pay for work done on a rest day

If work is done	For up to half normal daily working hours	For more than half normal daily working hours	Beyond normal daily working hours
At the employer's request	One (1) day's salary	Two (2) days' salary	Two (2) days' salary + overtime pay
At the employee's request	Half (0.5) day's salary	One (1) day's salary	One (1) day's salary + overtime pay

This rest day entitlement applies to part-time employees who work at least five (5) days in a week. However, the hourly basic pay only increases to one point five (1.5) times his hourly basic rate of pay to the extent that his working hours are longer than the normal work hours of a full time employee.

Maximum work time & overtime pay

Employees are not required to work for more than eight (8) hours in a day or for more than 44 hours in a week. In calculating working hours (which shall not exceed eight (8) hours), rest hours are excluded.

Employees may work for more than eight (8) hours a day or for more than 44 hours in a week in the following scenarios set out in Table 2.

Table 2. Scenarios in which employees may work for more than eight hours a day or for more than 44 hours in a week

If the employee works	The employee's contractual hours of work are
Five (5) days or less a week	Up to nine (9) hours per day or 44 hours a week
Less than 44 hours every alternate week	Up to 48 hours a week, but capped at 88 hours in any continuous two (2)-week period. Example: If week 1 = 40 hours; week 2 = 48 hours; week 3 = 40 hours: • Average for weeks 1 and 2 = 44 hours • Average for weeks 2 and 3 = 44 hours
**For shift workers only* Shifts of up to 12 hours a day	Up to an average of 44 hours over a continuous three (3)-week period. Example: If week 1 = 40 hours; week 2 = 44 hours; week 3 = 48 hours; week 4 = 40 hours: • Average for weeks 1, 2 and 3 = 44 hours • Average for weeks 2, 3 and 4 = 44 hours

Where these employees are asked to work overtime, they shall not be required to work for more than 12 hours in any one (1) day (including overtime). These employees shall also not be required to work more than 72 overtime hours in a month (not including normal hours).

An employee who works overtime at the request of the employer is entitled to be paid at the rate of not less than one point five (1.5) times his hourly basic rate of pay. Such instances include mandatory training requested by the employer outside of working hours.

Paid annual leave

An employee who has served an employer for at least three (3) months is entitled to paid annual leave of seven (7) days in respect of the first 12 months of continuous service with the same employer. The paid annual leave entitlement increases by one (1) day for every subsequent 12 months of continuous service with the same employer, subject to a maximum of 14 days (i.e. from the eighth (8th) consecutive year of service onwards). Paid annual leave entitlement is in addition to rest days, holidays, and sick leave.

Sick leave entitlements

An employee covered by the Employment Act is entitled to paid sick leave, including medical leave issued by a dentist if:

- the employee has served the employer for at least three (3) months;
- the employee has informed or attempted to inform the employer of his or her absence within 48 hours. Otherwise, the employee will be deemed to be absent from work without permission or reasonable excuse; and
- the sick leave is certified by the employer's doctor, or by a government doctor (including doctors from approved public medical institutions).

The number of days of paid sick leave a new employee is entitled to depends on his or her service period, as shown in Table 3.

Table 3. Entitlement of an employee's paid sick leave

No of months of service completed of a new employee	Paid Outpatient non-hospitalisation leave (days)	Paid hospitalisation leave (days)*
Three (3) months	**5**	**15**
Four (4) months	5 + 3 = **8**	15 + 15 = **30**
Five (5) months	8 + 3 = **11**	30 + 15 = **45**
Six (6) months	11 + 3 = **14**	45 + 15 = **60**
Thereafter	**14**	**60**

An employee is deemed to be hospitalised if he or she is certified by a doctor to be in need of hospitalisation. It is not necessary for him or her to be warded in the hospital.

CPF

Employers and employees are required to make monthly contributions to the CPF accounts of any employee who is a Singapore citizen or permanent resident, as long as that employee earns more than S$50 a month. This requirement applies to employees who are students or family members, and part-time or casual employees as well. CPF contributions are not permitted for foreigners employed on work permits.

For Singapore citizens and Singapore permanent residents ("SPRs") from the third (3rd) year of obtaining SPR status, an employer's rate of contribution depends on the employee's age group. Employers are also liable to pay certain fees and levies such as the skills development levy (for all employees) and foreign worker levy (for foreign workers).

Anti-discrimination

Employers are expected to adopt the fair employment practices set out in the Tripartite Guidelines on Fair Employment Practices, which include hiring practices that are fair, merit-based and non-discriminatory. Discriminatory hiring practices include hiring or non-hiring based on race, religion, gender, marital status, age, disability or nationality. In addition, expectant mothers are protected under the Employment Act and the Child Development Co-Savings Act (Cap. 38A, 2002 Rev. Ed. Sing.) from being dismissed without sufficient cause.

Individuals who encounter employment discrimination can contact the Tripartite Alliance for Fair & Progressive Employment Practices ("TAFEP") for advice and assistance, and TAFEP will assess the circumstances and work with the employer to review and improve that employer's employment practices. Where the employer is not cooperative or unresponsive, or persistently fails to improve its employment practices, TAFEP may refer the case to MOM for further investigation and action. MOM may issue a warning against the employer, and may also curtail that employer's work pass privileges.

Workplace Harassment

The Protection from Harassment Act (Cap. 256A, 2015 Rev. Ed. Sing.) protects persons against harassment and related anti-social behaviour generally, and provides for criminal sanctions and civil remedies.

Harassment may take many forms, and includes stalking, threatening language or non-verbal gestures, and cyber bullying. Harassment can also be conducted through social media or electronic communications.

In the context of the workplace, employers should adopt the best practices set out in the Tripartite Advisory on Managing Workplace Harassment,[5] which include:

- developing a harassment prevention policy;
- providing information and training on workplace harassment; and
- implementing reporting and response procedures.

Victims of harassment may apply directly to the Singapore Courts for a protection order or expedited protection order to direct the harasser to stop the harassing behaviour, or cease the spread of harassing communication. They may also seek monetary damages as a civil remedy or make a police report against the harasser.

What is Personal Data Protection?

The Personal Data Protection Act 2012 governs the "collection, use and disclosure of personal data by organisations in a manner that recognises both the right of individuals to protect their personal data and the need of organisations to collect, use or disclose personal data for purposes that a reasonable person would consider appropriate in the circumstances" (Section 3).

Under Section 2(1) of the Personal Data Protection Act 2012, personal data is defined as "data, whether true or not, about an individual who can be identified – (a) from that data; or (b) from that data and other information to which the organisation has or is likely to have access". This would include an individual's full name, identification number, photograph or video image, mobile telephone number, and personal e-mail address. It does not apply to 'business contact information', which includes a person's position or title, business telephone or fax number, business address, or business e-mail address.

The Personal Data Protection Act 2012 prohibits the collection, use or disclosure of personal data about an individual without that individual's express or deemed consent. For instance, where a job applicant submits his or her job application that contains personal data, that job applicant

5. Ministry of Manpower, *Tripartite Advisory on Managing Workplace Harassment*. Singapore: Ministry of Manpower, 2015. Print

may be deemed to have consented to the collection of personal data for the purposes of his or her job application. Consent is not required for the collection of personal data in certain circumstances, for example where:

- the personal data is publicly available;
- the collection is necessary for evaluative purposes ("Evaluative Purposes"), such as determining the suitability, eligibility or qualifications of that individual for employment or removal from employment;
- the personal data is collected solely for artistic or literary purposes; or
- the personal data is included in a document produced in the course and for the purposes of an individual's employment, business or profession, and collected for purposes consistent with the purposes for which the document was produced.

Where an organisation intends to use or disclose personal data that has been collected, consent is required unless such use or disclosure comes within certain circumstances, such as where the personal data is publicly available, or the use is necessary for Evaluative Purposes.

Organisations are also obliged to make reasonable efforts to ensure personal data collected is accurate and complete, if the personal data is likely to be used by the organisation to make a decision that affects the relevant individual or is likely to be disclosed to another organisation. Organisations must also make reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification or disposal of personal data. Organisations are further subject to certain obligations on the retention of personal data and the transfer of personal data outside of Singapore. In certain circumstances, an organisation may be required to provide access to an individual in relation to their personal data or correct errors or omissions in such person's personal data.

What about Older Employees?

For older employees, the Retirement and Re-employment Act sets out certain conditions relating to the minimum retirement age, termination before retirement, salary adjustment at the age of 60, and re-employment upon retirement.

The prescribed minimum retirement age is 62, and an employment contract can only provide for a higher retirement age (i.e. retirement at age 61 is not permitted). Before the minimum retirement age of 62, an employer cannot dismiss an employee on the ground of age. Dismissal refers to the termination of an employment contract by the employer with

or without notice, or if the employer retires the employee, or requires or causes the employee to retire or resign on the ground of age. Dismissal may also include non-renewal of an employment contract. If the employment contract provides for a higher retirement age (e.g. age 67), the employee may be able to be protected under the Retirement and Re-employment Act against dismissal on the ground of age. However, the Retirement and Re-employment Act does not prohibit dismissal on other grounds such as poor performance, ill health or misconduct, and does not prohibit the non-hiring of potential employees on the basis of age.

If an employee reaches the specified age for retirement (whether age 62 or the higher age set out in the employment contract), the employer must offer re-employment up to the age of 67 (with effect from 1 July 2017), provided the employee satisfies the criteria of (1) being assessed by the employer to have satisfactory work performance; and (2) being medically fit to continue working. The re-employment offer is subject to a new employment contract, although the retiring employee is not obliged to accept the offer. The employer is also not required to re-employ the retiring employee if there is no suitable vacancy, wherein the employer must either transfer his re-employment obligations to another employer (with the employee's consent) or offer a one-off employment assistance payment to the employee. The Tripartite Guidelines on the Re-employment of Older Employees recommend an employment assistance payment of S$5,500 up to a cap of S$13,000.

Retrenchment

All employers with at least ten (10) employees where five (5) or more employees are retrenched within any six (6)-month period will be required to submit a notification to MOM within five (5) working days after the fifth (5th) employee (or any employee thereafter) is notified of his or her retrenchment. This notification is to enable MOM, NTUC and SNEF, and other relevant agencies to help retrenched employees be re-employed.

Retrenchments are defined as dismissal on the ground of redundancy, or any reorganisation of the employer's profession, business, trade or work. The definition of retrenchment applies equally to permanent employees and contract workers with contract terms of at least six (6) months.

In addition, employees covered under Part IV of the Employment Act who have been in continuous service with their employers for less than two (2) years are not entitled to retrenchment benefits.

What is a Non-Compete or Restraint of Trade Clause?

An employee may be subject to a non-competition or restraint of trade clause if the employee ceases his or her employment relationship with an employer. Such restraint of trade could be in the form of forfeiture of employee benefits as well. To determine whether such obligation can be enforced against the employee or is void under law, the Singapore Courts will consider if the restraint of trade is reasonable with respect to the interests of the parties, and reasonable with respect to the interests of the public.

To be reasonable with respect to the interests of the parties, the employer must show that there is a legitimate proprietary interest to protect, including maintaining a stable workforce (i.e. preventing a former employee from soliciting staff away from the company), protection of trade secrets, and protecting customer connections. Such restraint of trade must also not be wider than necessary in terms of the scope of activities prohibited, the geographical area covered, and the period of limitation. If the restraint of trade obligation is too wide, the Singapore Courts may strike out the entire obligation, or enforce only part of the obligation.

How can my Employment Contract be Terminated?

Employees covered by the Employment Act

The Employment Act provides minimum notice periods, ranging from 24 hours to four (4) weeks' notice depending on the length of employment, as shown in Table 4. This does not prevent either party from waiving his right to receive the notice.

Table 4. Minimum notice period for termination based on length of employment

Length of Service	Notice Period
Less than 26 weeks	One (1) day
26 weeks to less than two (2) years	One (1) week
Two (2) years to less than five (5) years	Two (2) weeks
Five (5) years and above	Week (4) weeks

If there are grounds of misconduct or wilful breach of the employment contract by the employee, it is possible for the employer to terminate the contract without notice (i.e. summary dismissal). An employer is obliged to conduct due inquiry if he wishes to summarily dismiss an employee for misconduct. Essentially, due inquiry means that the employee must be afforded procedural fairness prior to dismissal. Although there is no prescribed procedure for the conduct of the inquiry, the MOM has issued guidelines on how an inquiry may be conducted. As a general guideline, the person hearing the inquiry should not be in a position which may suggest bias and the employee being investigated for misconduct should have the opportunity to present his case.

Employees not covered by the Employment Act

If the employee is not covered by the Employment Act, the employer may terminate the contract by providing notice, as stated in the employment contract. If no notice period is fixed in the contract, "reasonable notice" must be given. What is reasonable will depend on factors such as the nature of the employment and the employee's length of service.

It is also possible for the employer to terminate the contract without notice on grounds of the employee's misconduct, or in the event of any wilful breach by the employee of a condition of the contract. When an employee is summarily dismissed, the company must be able to justify its grounds for the summary dismissal. If the grounds seem incorrect or insubstantial, the dismissal can be challenged. Nonetheless, an employee who is not covered by the Employment Act is generally not entitled to an internal inquiry unless the employment contract expressly provides for it.

What are the Requirements for Employing a Foreigner?

If an employer intends to hire a foreign employee (and not hire an independent contractor), the Employment of Foreign Manpower Act would apply. A work pass, such as an employment pass, S pass or work permit for performing artist would need to be applied for by the employer before the foreign employee can commence work in Singapore.

An overview of the key attributes of the above three (3) categories of work pass is set out in Table 5.

How can Labour Disputes be Resolved?

Employment disputes can be resolved in the Singapore Courts, unless their employment contract specifies some other form of dispute resolution such as arbitration or mediation. In addition, the MOM provides mediation

Table 5. Categories of work passes and their attributes

	Work Permit for Performing Artist	S Pass	Employment Pass
Type of Employee	Foreign performing artists working in eligible public entertainment outlets (e.g. bar, discotheque, nightclub, pub, hotel, restaurant)	Mid-skilled technical staff holding certain educational qualifications including technical certificates	Foreign professionals in a managerial, executive or specialised job, with acceptable qualifications
Qualifying Salary	Not applicable	Fixed monthly salary of at least S$2,200, and more experienced candidates would need higher salaries	Fixed monthly salary of at least S$3,600, and more experienced candidates would need higher salaries
Duration	Maximum of six (6) months (non-renewable)	Maximum of two (2) years (renewable)	Maximum of two (2) years (renewable)
Quota and Levy	S$450 for up to eight (8) artists, S$750 for nine (9) artists and above	Work Permit Quota: 15% of company's total workforce in the services sector; 20% for all other sectors Levy is dependent on sector and percentage of total workforce	No foreign worker levy or quota
Medical Insurance	Must be provided by employer	Must be provided by employer	Not required

and conciliation services. Employees covered under the Employment Act can refer disputes to the Commissioner for Labour.

The Employment Claims Tribunal was established in April 2017 under the State Courts of Singapore (replacing the role of the Commissioner for Labour) to give employers and employees a simple and expeditious method to resolve salary-related employment disputes, subject to eligibility criteria, a maximum claim amount and a time limit. At the same time, the Tripartite Alliance for Dispute Management was set up to provide pre-Employment Claims Tribunal mediation and advisory services, and serve as the MOM-approved mediation centre for all employees, both unionised and non-unionised workers.

In addition, the Tripartite Mediation Framework under the Industrial Relations Act was expanded to cover all union members in non-unionised companies (whether PMEs or otherwise) from April 2017. Claims under the Tripartite Mediation Framework include salary arrears, breach of individual employment contracts, payment of retrenchment benefits, statutory employment benefits and re-employment matters.

Other Useful Resources

Ministry of Manpower: www.mom.gov.sg

Tripartite Alliance for Fair & Progressive Employment Practices: www.tafep.sg

Inland Revenue Authority of Singapore: https://www.iras.gov.sg/irashome/Businesses/Self-Employed/-Sole-Proprietors/-Partners/

CHAPTER 3
CONTRACTS

"A man's 'original and natural right' to make all contracts that are 'intrinsically obligatory,' and to coerce the fulfilment of them, is one of the most valuable and indispensable of all human possessions"

– Lysander Spooner

The Value of signing a contract

Imagine this scenario...

You have just completed three (3) hours of intense discussions and negotiations with the producer of a new television series on travel around the region. As a result of your excellent presentation, the producer said that he would consider you for one of the main roles in the television show which has been touted as a game-changer for the local television scene. At the producer's request, you took a flight to Tokyo to meet with the production crew for the first shoot. On arrival, you were told by another producer that you would be cast for only a supporting role in the show and accordingly, the remuneration package and reimbursements for expenses were half of what had been earlier indicated. Your argument would no doubt be that there had been a verbal agreement made with the production company as the terms had been discussed with the producer who had met up with you. Hence, the production company would be under an obligation to honour the promise of a main role in the television show as well as the higher remuneration package and better terms of reimbursements for expenses.

Certainly, a verbal contract is as binding as a written contract. The key question is how you are going to prove that such a verbal contract indeed existed, and if it did exist, the nature of the role that you had been contracted to undertake, the terms of your remuneration and your right to reimbursements for expenses. Did the producer who first met with you have the authority from the production company to award you a contract? If he had such authority, what were the terms and conditions of such a contract? Was an agreement concluded on the nature of your role or was it only an indication of the role that you might be engaged to play?

In such a scenario, a properly written contract signed between you and the production company before embarking on the trip to Tokyo could have eliminated the points in dispute.

Takeaways

- Leaving everything to just a handshake gives rise to potential confusion, disputes and hassles – make the bargain clear by documenting agreed terms by way of a written contract.
- A properly written contract ensures each party knows:
  - ✓ with whom he or she is contracting;
  - ✓ who bears the responsibility when an aspect of the bargain is not met;
  - ✓ the extent and limits of his or her responsibilities and liabilities;
  - ✓ the scope of his or her duties;
  - ✓ the time frame within which to perform such duties;
  - ✓ the remuneration entitlement, compensation and share of benefits, gains or profits;
  - ✓ the recourse available when the other party defaults or when relationships sour; and
  - ✓ the circumstances under which he can walk away from the bargain legitimately.
- Be wise. Do not be swayed by your counterparty's suggestion that trust is undermined just because you ask for a written contract.

Contract Law in Singapore

Contract law in Singapore is not codified by statute. Based largely on the common law of contract as developed in England, much guidance comes from past decisions and rules laid down or followed by the Singapore Courts. Often you would see our Courts taking into consideration precedent cases of similar nature that have been determined in the English superior Courts as well as Courts in other common law jurisdictions. Whilst contract law in Singapore is largely in the form of judge-made rules, Parliament has passed specific statutes to modify the general law of contract applicable in Singapore. Examples of such statutes include the Consumer Protection (Fair Trading) Act (Cap. 52A, 2009 Rev. Ed. Sing.) and the Contracts (Rights of Third Parties) Act (Cap. 53B, 2002 Rev. Ed. Sing.).



"Don't sign in blood — saliva, can?"

It Takes Two (2) hands to Clap, Sometimes More Than Two (2)

What is a contract? It is essentially an agreement that has been reached between two (2) or more parties, with agreed terms being enforceable by one party against the other party or parties. A contract can be formed orally or in writing. Whether the parties have reached an agreement that they regard as binding and enforceable is determined objectively from the facts.

The following are indicative of a contract being formed:

- there is offer and acceptance;
- consideration is given for the promise or undertaking given by one (1) party to another; and
- there is clear evidence of an intention to create legal relations. Parties in domestic or social arrangements (for example, husband and wife) are generally presumed not to intend to create legal relations.

All of the above must be proven.

Offer and Acceptance

The concept of offer and acceptance is critical to any analysis on whether an agreement has in fact been reached (be it oral or written). A written contract, no matter how well-drafted, is not enforceable until and unless it has been executed by the parties or their representatives with the requisite authority to do so.

How does one define "offer"? An offer has the following characteristics:

- it is a promise, or an express willingness on the part of the person making the offer ("offeror") to be bound on specified terms – subject only to unconditional and unqualified acceptance by the person to whom the offer is made; and
- it is not a mere invitation or solicitation for an offer from counterparties or a mere request for information. For example, a newspaper advertisement put up by a talent agency for backing vocalists would not be regarded as an offer to engage anyone who knocks on the doors of the talent agency with a copy of the advertisement.

What about "acceptance"? From a legal perspective, a contract is not formed and an agreement is not reached unless and until there is acceptance by the person to whom the offer has been made. An acceptance must bear the following characteristics:

- it must be unconditional and unqualified acceptance of the terms on which the offer is made, such that the terms are accepted without variance and not subject to any condition;
- acceptance is normally expressed in the form of words or by conduct, but may in exceptional cases sometimes be inferred from silence; and
- acceptance must generally be communicated to the offeror unless where the postal acceptance rule[6] applies.

Certainty and Completeness

Aside from ensuring there is an offer made and an acceptance communicated, it is important to ensure that the terms of the contract are sufficiently certain. What you are contracting for must be clear and specific. Whilst the Courts may resolve any apparent vagueness or uncertainty in certain instances by referring to the acts of the parties, past dealings or trade practice, the fundamental terms of the agreement must be beyond doubt.

6. The postal acceptance rule provides that an offer is deemed to have been accepted by the person to whom the offer is made as soon as the letter of acceptance is posted. Generally, it does not matter if the letter of acceptance does not eventually reach the offeror.

For example, the Courts will not infer or write into a contract the purchase price of a property that you have contracted to sell if the same is not stated.

A contract is enforceable only if the agreement is complete. For instance, if either party were to make it clear that further terms are to be included for discussion, the agreement reached thus far would be regarded as incomplete and no enforceable contract is formed at that point. If you should see expressions such as "subject to contract" and "subject to further discussion", these are indications of an incomplete agreement.

The signing of a contract typically involves the handwritten signatures of the parties or parties' authorised signatories. The Electronic Transactions Act (Cap. 88, 2011 Rev. Ed. Sing.), however, makes it possible for electronic records to be used in expressing an offer or acceptance in the context of forming a binding contract. The law maps out how the time and place of despatch and receipt of an electronic record are to be determined. In this digital age where people are prone to exchange ideas and information through social media as well as electronic media such as e-mail and WhatsApp, care must be taken that one does not inadvertently commit to a binding and enforceable agreement as a result of a cavalier response to a message that turns out to be a valid offer.

Takeaways

- For a contract to be binding and enforceable against your counterparty, you need to ensure the following:
  - ✓ there is an offer made and an acceptance communicated;
  - ✓ the offer made must be clear and unequivocal in terms of the subject-matter of the offer and the terms and conditions that are applicable to the contract, if proceeded with;
  - ✓ the acceptance must be communicated to the person making the offer (or as directed by the terms of the offer) and has to be unconditional and unqualified; and
  - ✓ the agreement is complete. If it can be determined from the facts that parties' intention is not to be bound until a formal contract is inked, any agreement that has been reached between the parties prior to the signing of the formal contract will not constitute a binding contract (oral or otherwise).

Illustrative Example

Writer X sent a script via e-mail to Producer A to ask for his views on the acceptability of a storyline for a new drama series with a post-script stating that "[I] hope to work on a drama with you some time". In the meantime, Producer B came to know about the script and made a written offer setting out the essential terms to Writer X for the purchase of the script. Writer X decided to go with Producer B as she was impressed by his enthusiasm and, of course, the contract price offered. However, before Writer X could communicate her decision to Producer B, Writer X received an e-mail message from Producer A stating unequivocally that he "agrees to accept Writer X's offer" and would take on the script for his next drama production on the terms set out in his e-mail message.

Question: Having received the letter from Producer A which purportedly accepts Writer X's offer, does Writer X have the right to proceed with Producer B on the contract?

Analysis: The key question is whether Writer X has made an offer to Producer A when she reached out to him. The likely answer is that there is no offer that is capable of being accepted by Producer A to form a binding and enforceable contract for the following reasons:

1. Writer X's intention when she passed the script to Producer A was to assess the acceptability of the script for production. The intention arguably was not to create a binding contract of sale of the script to Producer A;
2. The essential terms of the contract (even if intended) were not stated or made clear at the time the script was passed to Producer A. The fact that Producer A was the first to set out the terms of the purported agreement in his letter showed that to be the case; and
3. Arguably, even if Writer X had intended to enter into a binding contract with Producer A, the purported acceptance by Producer A could not have been valid given the lack of certainty (in respect of what exactly Writer X was offering – for example, sale of script or co-production using the script?) and the incomplete nature of the agreement.

Producer A's letter is at best an offer made by Producer A for Writer X's consideration. Since Writer X did not make a binding offer to Producer A, Writer X is free to decide between Producer A and Producer B.

As a side note, Writer X's e-mail to Producer A and Producer A's e-mail response to Writer X would have been capable of constituting a binding contract without physical exchange of hardcopy contracts if the elements of a valid and enforceable agreement had been demonstrated in the exchange of e-mail messages.



"Your Honour, it is clear that my client did not have the capacity to enter into even a handshake deal."

Consideration

In order for a promise or an undertaking to be enforceable under a contract, it must be supported by consideration. There are two (2) exceptions to this: where the contract has been executed as a deed and where a promise constitutes a promissory estoppel.[7]

7. The doctrine of promissory estoppel applies where a party ("**Party A**") makes an unequivocal promise that he will not insist on his strict legal rights under the contract, and the other party ("**Party B**") acts in such a way as to change his position in reliance on that promise. In such a situation, Party A cannot thereafter seek to enforce those rights against Party B if it would be inequitable to do so. For example, a landlord who promises to receive from the tenant a discounted rent because of difficulty in finding tenants is estopped from later suing for the outstanding arrears when he is able to find more tenants.

What is consideration? It refers to something that is of value (as legally defined), requested by the party making that promise or giving that undertaking. An obvious example of consideration would be the appearance fee paid to a celebrity or performance artist. However, consideration does not need to be in the form of cash payment or something physical; it can be simply some benefit received by the person making the promise or some detriment to the person receiving the benefit of the promise. Of course, one must be able to establish some causal relation between the consideration and the promise or undertaking given. The consideration cannot be given before the promise or undertaking is given, save where in the course of giving the consideration, parties to the contract can be shown to have the understanding that the consideration has been given in anticipation of the subsequent fulfillment of the promise or formalisation of the undertaking.

It should be noted that for consideration to be validly given for the purposes of contract formation, it does not matter if the value of the consideration is not commensurate with the value of the promise given.

Takeaways

- A contract may be unenforceable on account of lack of consideration.
- Consideration can be in monetary terms or in kind. It can be simply some benefit received by the person making the promise or some detriment to the person receiving the benefit of the promise.
- It does not matter that the value of the consideration is not commensurate with the value of the promise given.

Illustrative Example

A make-up artist agrees to a contract where she has been promised only S$200 for a one (1)-month assignment. The market rate for such an assignment turns out to be S$4,000. The make-up artist would fail in her claim that she can walk away from the contract on account that the consideration (of S$200) is not commensurate with the value of the promise given (i.e., to work on the assignment for one (1) month) and grossly below the market rate. The consideration of S$200 may be inadequate but is sufficient for the purposes of the legal requirement for good consideration. The make-up artist has simply made a bad bargain and will likely have to bear the consequences of it.

Are the Parties Old Enough?

Having the legal capacity to enter into a contract is critical. If you or your counterparty to a contract turns out to be a minor (i.e. under the age of 18), that contract cannot be enforced against that minor. The following are some exceptions:

- contracts that relate to supplies of goods or services that are necessary for the maintenance of the minor's life; and
- contracts of service which are, on the whole, for the minor's benefit.

Certain contracts such as those involving land, will require counterparties to be at least 21 years of age in order for such contracts to be binding and enforceable.

Do be aware that if you provide a personal guarantee in respect of a minor's contract, the counterparty to the contract will be able to claim against you as the guarantor for any default. This rule applies notwithstanding that the minor's contract is itself unenforceable as against the minor. As to whether you will in turn be able to claim against the minor for restitution, the Minors' Contracts Act (Cap. 389, 1994 Rev. Ed. Sing.) provides that the Court will only order for such restitution if it is of the view that such claim would be just and equitable.

Unsoundness of Mind Affects the Legality of Contracts

If a person is of unsound mind at the time that he enters into a contract, that contract is enforceable against him or her except in the following cases:

- it is proven that he was incapable of understanding what he or she was doing; and
- his or her counterparty knew or ought reasonably to have known of his or her mental incapacity.

The same principles apply to persons affected by drunkenness at the time of signing of a contract.

A further exception to note: The Sale of Goods Act (Cap. 393, 1999 Rev. Ed. Sing.) provides that persons who are mentally incapacitated or drunk under the influence of alcohol remain liable to pay a reasonable price for necessaries[8] supplied.

8. "Necessaries" are goods suitable to the condition in life of the minor or other person concerned and to his or her actual requirements at the time of the sale and delivery.

Takeaways

- Be aware of who you are entering into an agreement with, and the circumstances under which such agreement is entered into (for example, after a few rounds of drinks, or at a bar). If the counterparty is a minor or has been incapacitated mentally or by drunkenness, you may not be able to enforce your rights against such a counterparty.
- If you have been asked to provide a personal guarantee in respect of a minor's contract (for example, where parents are asked to guarantee the contractual obligations of their children), take note that the counterparty to the contract has the right to claim against you under the personal guarantee even though that contract cannot of itself be enforced against the minor.

Who Can Enforce a Binding and Validly Existing Contract?

As a general rule, only persons who are parties to a contract or who are specifically named as being entitled to enforce, can enforce the rights and obligations arising from the contract. A third party who is not a party to a contract is generally not allowed to bring any action or claim in his own name for any breach of contract committed by any party to the contract. This is notwithstanding that the third party has suffered loss as a result of that party's failure to perform. This is generally known as the "rule of privity of contract".

In Singapore, the exceptions to the general rule of privity include the following:

- the general statutory exception created by the Contracts (Rights of Third Parties) Act;
- the specific statutory exceptions under the Bills of Exchange Act (Cap 23, 2004 Rev. Ed. Sing.) and the Bills of Lading Act (Cap 384, 1994 Rev. Ed. Sing.); and
- the exceptions provided under general law relating to agency, trust and land.

The Contracts (Rights of Third Parties) Act recognises that a third party (not being a party to a contract) may suffer as a result of a failure on the part of a party to the contract to perform his obligations. The statutory right that is given to such a third party under the act is the right to enforce the

contract against the non-performing party even though the third party has technically not given any contractual consideration. Generally, the third party may exercise this right if (a) the contract expressly provides that the third party may enforce a term of the contract in his or her own right or (b) the contract, "purports to confer a benefit on the third party". However, please note that there are a number of ways in which such a right is qualified, and in practice it is common to find contracts expressly excluding the application of the Contracts (Rights of Third Parties) Act.

The exceptions under the last two (2) bullet points above are too technical for our purposes. For more information, please refer to the resources provided at the end of this Chapter.

Certain Conduct that may Invalidate or Vitiate a Contract

The following conduct may vitiate a contract which on the face of it has been validly entered into:

- *Duress* – coercing a counterparty into signing the contract – for example, through threats of unlawful acts or bodily harm, or using improper pressure which affects the counterparty, his or her assets or economic interests; and
- *Undue influence* – the exercise or use of a dominant position to cause a counterparty to agree to a contract, acting in a way such as to substantially undermine the counterparty's ability to think independently when considering the contract and its terms. Note that there are situations where undue influence is presumed (i.e. taken to be the case until proven otherwise).



"Of course all the necessary elements of a contract are here... It's just that the Offer is one you can't refuse."

For instance, a presumption of influence arises automatically in the case of the following relationships: parent-child, guardian-ward, trustee-beneficiary, doctor-patient, lawyer-client and director-company. In a case where there is such a presumption, the burden of proof is on the dominant party to prove that the other party understood what he had done and had been allowed to exercise his judgment freely when he entered into the contract.

A good way to rebut such a presumption is to ensure that the weaker party is given the opportunity to seek independent legal advice prior to signing the contract.

If a contract is entered into by a party under duress or such party has been subject to undue influence, that contract is voidable[9] in the hands of the weaker party.

Contracts in Restraint of Trade

A contract that is wholly in restraint of trade (i.e. a contract that essentially restricts a person's right to carry on their trade or profession) is regarded as illegal at common law and contrary to public policy. It is void.

However, if the restraint of trade clause is reasonably drafted and the primary aim is shown to be for the purposes of protecting legitimate interests, it will be upheld by the Courts. The important factors that would be taken into consideration to determine if a restraint of trade clause is reasonable include the following:

- the length of time for which the restraint of trade is to apply;
- the geographic scope that such restraint would cover; and
- whether there are legitimate interests to be protected or if the primary purpose of the restraint of trade clause is to prevent or reduce competition?

Remedies for Breach of Contract

What are the remedies available in respect of a breach of contract?

- *Termination of the contract* – it is typical to find provisions in a contract that allow a party who is not in breach to call for a termination of the contract with claims for antecedent breaches (i.e. breaches that were committed prior to the termination) preserved;

9. The difference between a "void" and "voidable" contract: A void contract is unenforceable by either party. A voidable contract is a contract that is valid and binding but can be avoided or declared void by a party to the contract who is legitimately exercising a power to avoid the contractual obligations.

Takeaways

- A contract signed by a party under duress or by a party who is subject to undue influence may be avoided or declared void by the party who is subject to duress or undue influence.
- Certain relationships between the parties to the contract may give rise to a presumption of undue influence.

Illustrative Example

A young actress was pestered by a highly respected director to take on a lead role in a film to be directed by him. As the actress was not keen to take on the role which required her to travel to Africa for extended periods of time, she gently turned the director down. The director refused to back down. He met with the young actress for lunch and spent a good hour or so impressing upon her the extent of his influence in the film and entertainment industry, detailing the number of budding actors and actresses who had not been able to land themselves with acting assignments due to their unwillingness to "play by the rules." The director ended the conversation with a suggestion that perhaps the young actress should consider other career options. Not wanting to offend the director and being afraid that she would be blacklisted for future acting assignments, the young actress signed the contract laid before her without further hesitation.

Question: Can the young actress declare the contract with the director void and walk away from it?

Analysis: Arguably yes, given that the veiled threat by the director could amount to duress or undue influence.

- *Claim for liquidated damages* – where liquidated damages (i.e. a pre-agreed sum of damages that is payable in the event of a breach of contract) are provided for in the contract, a direct claim against the party in breach may be made, without having to go to Court to assess quantum of compensation that is reasonable. That said, liquidated damages may be challenged by the party in breach on the basis that such damages may not be genuine pre-estimates of the loss incurred. In such a case, the clause would be generally construed as a penalty clause and will be unenforceable; and

- *Judicial remedies* – there are four (4) broad categories of remedies available with the assistance of the Courts:
    1. Common law remedy of damages[10];
    2. Common law remedy of an action for a fixed sum;
    3. Equitable remedy of specific performance[11]; and
    4. Equitable remedy of injunction[12].

It should be noted that equitable remedies[13] such as those stated above are subject to the discretion of the Courts. In practice, the Courts would be disinclined to grant specific performance or injunction where damages are deemed to be sufficient to compensate the party not in breach for the loss.

In pursuing any of the judicial remedies, it is important to ensure that any action is not time-barred by statute or the provisions of the contract. Judicial remedies should be sought as early as possible following the discovery of a breach. This is especially so when it comes to seeking an equitable remedy.

Contract law expects a party who is not in breach of contract to mitigate any loss incurred. What this means is that the aggrieved party should take reasonable steps to reduce the loss or to avoid the loss altogether. Therefore, an aggrieved party who fails to avoid losses that could have been avoided will not be compensated.

Losses which are regarded as too "remote" will not be compensated. What this generally means is that where the losses concerned are objectively out of the ordinary, or entirely unexpected by parties at the time of the formation of the contract, it is likely that such losses would be regarded as too "remote".

Non-pecuniary losses (such as for hurt feelings, disappointment and mental distress) are generally not claimable save in the case of very limited circumstances where the contract itself relates to non-pecuniary matters.

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10. Damages are an award, typically of money, to be paid to a person as compensation for loss or injury.
11. Specific performance is a Court order requiring a party to perform a specific act, usually what is stated in a contract.
12. An injunction is a Court order requiring a person to do or cease doing a specific action.
13. Difference between "legal" and "equitable" remedies: Legal remedies typically only allow a claimant to recover monetary compensation. Equitable remedies on the other hand are actions that the Court prescribes which are typically granted when legal remedies or monetary compensation cannot adequately resolve the wrongdoing.

Takeaways

- A party who suffers losses as a result of a counterparty's breach of contract may resort to any of the following:
    - If provided for in the contract, exercise his right to terminate the contract without giving up his right to pursue claims for antecedent breaches;
    - If the contract provides specifically for liquidated damages, a direct claim may be made against the party in default;
    - Seek the Court's help in assessing the damages and to claim for the same;
    - Seek the Court's help to 'force' the counterparty to perform the contract (specific performance); and
    - Seek the Court's help to stop the counterparty to do any act or thing that would further undermine the interests of the party not in breach (injunction).
- A party who suffers losses as a result of a breach of contract by the counterparty must take reasonable steps to avoid or reduce the losses suffered.

Illustrative Example

Studio Plus has entered into a lease agreement with Starz Producers pursuant to which Starz Producers will have exclusive use of the recording studio managed by Studio Plus for the next 12 months. As a result of securing the 12-month lease, Studio Plus managed to persuade a local post-production support company, Singapore Icon, to agree in principle to take up rental of post-production facilities next to the recording studio. Prior to the commencement of the lease period, Starz Producers decided to move their activities to a studio in Malaysia claiming that the recording studio offered by Studio Plus did not meet their requirements. Starz Producers gave immediate notice to Studio Plus that they would not honour the 12-month lease agreement with Studio Plus. When Singapore Icon learned of Starz Producers' decision not to locate their activities at the recording studio, it also decided not to proceed with the rental of post-production facilities from Studio Plus.

Question: What should Studio Plus do in the circumstances?

Analysis:

- As a first response following receipt of the notice not to commence from Starz Production, Studio Plus should take reasonable steps to find alternative tenants or users for the recording studio. If Studio Plus fails to take such steps, any resultant losses suffered by Studio Plus in the form of forgone rentals may not be compensated. This is especially so if it can be proven that had Studio Plus put up the recording studio for lease immediately, the recording studio would have been leased out in no time.
- Unless liquidated damages are provided for in the contract, any claim for damages by Studio Plus will be subject to the Courts' assessment.
- Given that damages (i.e. monetary compensation) would be sufficient to compensate Studio Plus for its losses arising from the failure of Starz Producers to honour the lease agreement, the Courts are unlikely to grant an equitable remedy in the form of specific performance.
- While it is clear that Studio Plus would have been able to garner the custom of Singapore Icon (and therefore more revenue) if Starz Producers had proceeded with the rental of the recording studio, any claim by Studio Plus against Starz Producers for loss of revenue arising from the walk-away by Singapore Icon would likely fail on account of such damages being too remote.

Boilerplate Clauses

When drafting contracts, parties often use templates or forms which include certain common and standardised clauses. The term "boilerplate clauses" refers to these relatively standard clauses, which are often agreed to with little or no negotiation and are usually found towards the end of an agreement. Some examples of such clauses are set out below.

Assignment

An assignment clause typically either prohibits or permits a transfer of rights under the contract to another party. The clause may further specify whether all or only some of the rights may be transferred, and to whom they can be transferred.

Exclusion or limitation of liability

It is common to find clauses in standard form contracts which aim to exclude or limit one party's liability for breach of contract or negligence. In Singapore, the Unfair Contract Terms Act (Cap. 396, 1994 Rev. Ed. Sing.) acts as a safeguard to protect consumers who may be prejudiced by their weaker bargaining power in a contractual situation, and imposes limits on the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided under a contract. Generally, the Unfair Contract Terms Act only applies in a situation when a consumer deals with a business, and not as between businesses or between consumers.

Force majeure

A force majeure clause protects against a failure to perform contractual obligations caused by unforeseeable circumstances beyond the control of either party, such as natural disasters. Force majeure clauses usually identify the circumstances under which performance of the contract may be forgiven.

Governing law

Different countries have different laws and the content and effect of those laws can vary greatly. A governing law clause specifies which laws will govern the interpretation and enforcement of the terms of the contract. The choice of law usually reflects the country where one or more of the contracting parties, or where the subject matter of the contract, is situated.

Dispute resolution

Parties may from time to time dispute the terms or the existence of certain contracts. The dispute resolution clause will typically state the type of dispute resolution and the forum (i.e. where the dispute should be settled). Generally, there are three basic types of dispute resolution:

- *Mediation* – involves a neutral third party who aids disputants to come to a consensus between themselves. The process is consensual and non-adjudicative as both parties reach a compromise, and will usually cost less than either arbitration or litigation.
- *Arbitration* – is similar to litigation in that a neutral third party is responsible for resolving the dispute and rendering a decision. The key difference between arbitration and litigation is that disputants can negotiate virtually any aspect of the process, including whether lawyers will be present and which standards of evidence will be used. Moreover, arbitral decisions are usually confidential and the process is typically less expensive than litigation.
- *Litigation* – is probably the most familiar type of dispute resolution to

most, and typically involves a defendant facing off against a plaintiff before a judge. The judge is responsible for weighing the evidence and rendering a decision. The information conveyed in hearings and trials are usually entered into the public record.

While not as common, please note that the choice of law jurisdiction need not be the same as the venue for dispute resolution. For example, parties may opt for a contract to be governed by Malaysian law, but to be decided in Singapore Courts. In general, Courts will respect the parties' selection.

Ending a Contract

A contract may end in any of the following ways:

- *Due performance* – the obligations on the part of each of the parties to the contract have been duly and fully performed (or waived);
- *Mutual agreement* – parties to a contract can collectively and mutually agree to terminate the contract;
- *Impossibility of performance* – where a contract becomes impossible to perform without the fault of any of the parties to the contract, there would be an automatic discharge of the contract. The impossibility may also be something unexpected which changes the circumstances so radically that the contract would have to become fundamentally different from the original contract.
  For example, an engagement contract pursuant to which a foreign singer, Mr S, has agreed to perform at the Esplanade concert hall, would be automatically discharged if Mr S is for any reason barred from entering Singapore;
- *Termination for breach of contract* – breach of contract by one party may entitle the other party(ies) to consider the contract as at an end. Not all breaches of contract entitle the party(ies) who are not in default to terminate. It is important to make clear in the contract the type of breaches that would give rise or not give rise to a right of termination; and
- *Rescission* – rescission is the cancelling of a contract as if it had never existed. Contrast this with termination which regards the contract as having ceased at the time it is terminated. The act of rescission means that the parties are restored to the status quo prior to the entry into the contract, and the contract is treated as never having existed. It is critical that any act to rescind a contract must be taken as soon as possible following notice of breaches. Where it is not possible to restore the position of the parties to the status quo, rescission will not be an option.

Other Useful Resources

Law Society Pro Bono Services, Know the Law Now! booklet:
http://probono.lawsociety.org.sg/Pages/know-the-law-booklet.aspx

Singapore Academy of Law's website:
http://www.singaporelaw.sg/sglaw/laws-of-singapore/overview

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CHAPTER 4
DISPUTE RESOLUTION

"An ounce of mediation is worth a pound of arbitration and a ton of litigation!"

– Joseph Grynbaum

Overview

If you are involved in a civil legal dispute, you may be considering taking the matter to Court to protect your interests. However, you may also be concerned about the potential downsides of the traditional litigation process, for example, the exorbitant cost of litigation, the lengthy time involved in preparing for a trial and the pressures and risks associated with it.

Note

There are separate Court processes for criminal and civil cases. This Chapter covers civil legal disputes only.

- Generally, criminal cases involve the State, usually represented by the Public Prosecutor, and the person accused of a crime. The outcome of criminal cases usually involve some form of punishment, such as fines or imprisonment. The major source of criminal law in Singapore is the Penal Code (Cap. 224, 2008 Rev. Ed. Sing.).
- In contrast, civil cases in Singapore concern disputes between private parties and the outcome often involves monetary compensation for loss suffered. Breach of contracts, claims for personal and property injury are common examples of civil cases.

Litigation is not the only way to resolve a dispute. You may wish to explore alternative processes which may be more suitable for you. In addition to the general litigation process, there are the following alternative dispute resolution options:

- Mediation; and
- Arbitration.

Table 6 briefly compares the three (3) different options, although it may be noted that the table only serves as a rough guide of the general characteristics of the different form of dispute resolution. Each of these options will be explained in greater details later on in this Chapter.

Table 6. Dispute-resolution options

	Mediation	Arbitration	Litigation
Cost	Cheap	Average – more expensive than Mediation but cheaper than Litigation	Costly
Duration	Fast	Fast	Lengthy
Outcome	Not Binding	Binding	Binding



"Okay, on the count of three... Scissors... Paper..."

What is Litigation?

Courts in Singapore

Litigation refers to the enforcing of one's rights through the Courts. In deciding which Court has jurisdiction (i.e. powers to deal with or the claims), parties have to assess the value of their claims. Table 7 shows a range of claim values and the Courts in which they may be heard.

Table 7. Value of claims and the Courts in which they may be heard

Singapore Courts	Value of claims that can be heard
Small Claims Tribunal	< S$10,000 (or up to $20,000 where both parties to the dispute agree)
Magistrate Courts	< S$60,000
District Courts	< S$250,000
High Court	> S$250,000

Legal proceedings start with a plaintiff's lawyer sending a letter of demand requesting a certain action by a given period of time, to a defendant. Upon non-compliance by the defendant, the plaintiff may commence Court proceedings.

Any party who is not satisfied with the decision or order made by a District Judge or Magistrate in a civil action in the State Courts (which consists of the Small Claims Tribunal, Magistrate Courts and District Courts), may file an appeal to the High Court.

Litigation process

1. *Pleadings*

   Proceedings are commenced most often by the service by the plaintiff on the defendant of a document called the Writ of Summons.

   A statement of claim is served with the writ. This sets out a summary of the material facts supporting the claim, and the remedies being asked for. A defence may be filed in response to the statement of claim. Sometimes, if the defendant has a claim against the plaintiff on the same subject matter of the dispute, the defendant may file a counterclaim.

   Throughout the litigation process, parties are bound by the rules of Court. In addition, lawyers (or litigants-in-person who act for themselves) have to attend pre-trial conferences that are fixed once every six (6) weeks. The pretrial conference is a proactive

case management mechanism that allows the Court to monitor the progress of cases and give the directions necessary in order to facilitate the just, expeditious and economical disposal of the various action.



"Yes, I suppose you could characterize the Discovery process as 'I'll show you mine if you show me yours'."

2. *Discovery*

Parties are required to voluntarily disclose and produce copies of all relevant documents, both in support of and even those contradicting their own case, to the other party.

This stage is potentially time-consuming and extremely tedious especially for matters involving voluminous documentation. It should be highlighted that since lawyers typically charge by the hour, a lengthy discovery process would result in extremely hefty legal fees.

3. *Affidavits of evidence-in-chief*

The main body of the parties' evidence is to be reduced into written form, in a document called the affidavit of evidence-in-chief ("AEIC"). Every relevant and material fact and document in

support of the claim, or to refute opposing arguments should be contained in the AEIC, for each and every one of the witnesses relied upon.

4. Trial

Parties attend an open Court hearing presided over by the Judge. At trial, parties are cross-examined, chiefly by way of leading questions – which are questions where the answers are often suggested within the questions themselves), by the opponent's lawyer on the contents of their AEICs. This is a process designed to extract admissions or to gather concessions, in a bid to illicit the truth.

After the cross-examination ends, the parties may be re-examined by their own lawyer to clarify certain answers given during cross-examination. As a general rule, no leading questions may be asked during re-examination.

Leading vs Non-leading Questions

- Leading questions generally contain in themselves the answers that the lawyer asking such questions hopes to get. It is usually a yes-no question.
    - E.g. Were you at the dance studio on the night of 1 January 2017?
- Non-leading questions are usually open-ended, such as "Who", "What", "Where", "Why", "When" type of questions.
    - E.g. Where were you on the night of 1 January 2017?

Trials are stressful times for witnesses whereby the level of stress generally increases as the trials drag on, as lawyers may ask them a series of difficult questions, designed to make them appear to be untrustworthy. This is something you should be prepared for, if you are required to act as a witness in a trial.

The judgment in a trial is delivered by a Judge. If one or more parties are dissatisfied with the judgment, such parties may then proceed to file an appeal in the Court of Appeal. An appeal process is costly and the judgment may not always satisfy parties.

What is Mediation?

Mediation is a voluntary process which engages the assistance of a neutral third party called a mediator. The mediator facilitates negotiations and assists parties in reaching a mutually acceptable agreement. The parties to the mediation control the outcome. The parties do not reach a resolution unless all sides agree.

A mediator facilitates communication, promotes understanding, assists the parties to identify their needs and interests, and uses creative problem-solving techniques to enable the parties to reach their own agreement.

The general types of disputes that use mediation are:

- Civil and commercial disputes;
- Disputes about divorce and matrimonial matters;
- Employment disputes; and
- Medical negligence.

Cases that are suitable for mediation include the following:

- Cases which are not clear-cut (i.e. evidential problems);
- Cases in which the value of the claim does not justify costs/ time required for litigation; and
- Cases where relationships are forefront and emotions are likely to run high (i.e. family disputes).

Why choose mediation?

1. *Control over outcome*

   Mediation focuses on the interests of all parties. The parties reach settlement only when they are satisfied with the terms that they have mutually agreed to, with the help of their mediators. One of its advantages is that it provides pragmatic solutions that the law may not be able to provide for. In these circumstances, one can be assured that the solutions will cater to the underlying interests of all parties. The settlement terms are binding on the parties.

   Parties have control over the outcomes as they are able to mutually decide on the terms of settlement. By contrast, in a lawsuit or arbitration, one may face the risk of having a judge or an arbitrator deciding against one's case.

2. *Preserves relationships*

   Mediation is a process that allows parties to work together to achieve their desired outcome. It is non-confrontational and mediators ensure

that communication is objective and positive, aiding in the improvement of relationships where possible. This dispute resolution method is recommended especially when there is the need to maintain on-going commercial, working or familial relationships.

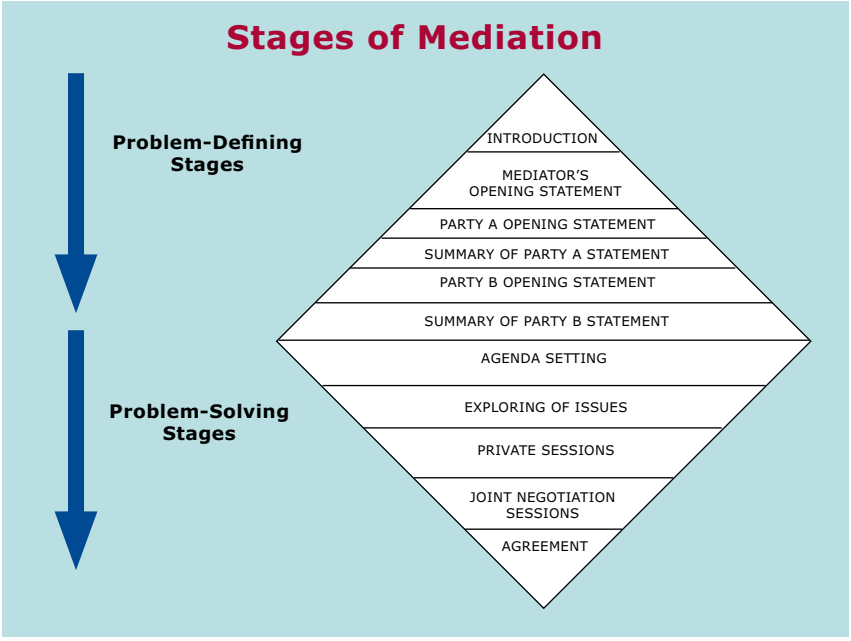
3. *Confidential*

Mediation is a process for parties who value their privacy as matters discussed in the mediation are confidential. As mediation is a "without prejudice" process, any matter discussed during the mediation cannot be used against parties in Court or in arbitration. As a result, the parties are given a safe environment to explore issues and different solutions. In such a setting, parties are more likely to arrive at creative and pragmatic solutions which fit their disputes.

4. *Flexibility*

Mediation is informal and flexible. Unlike litigation, there are no prescribed procedural rules to follow. Therefore, the process can be attuned to the dynamics of the dispute; bringing about less pressure to the parties involved.

Mediation process





"So... have you ever heard of mediation?"

A mediation will generally include the following stages:

1. The mediator will begin with an opening statement to introduce the parties to the process.
2. The parties will then be invited to share their concerns, which will be summarised by the mediator.
3. The next step in the process will be to make an agenda, where the mediator will assist parties to draw up a list of all relevant issues to be discussed.
4. The mediator will lead and encourage the parties to consider each issue in turn.
5. At some point in time, the mediator may request to see the parties privately for private sessions.
6. The parties may subsequently be brought together again for further joint discussions.
7. Where a settlement is reached in the mediation, the terms of the settlement (or at least the heads of agreement) will usually be recorded in writing and signed by or on behalf of the parties.
8. The parties are then bound by the terms of the agreement.

What is Arbitration?

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. Parties normally agree to arbitration by means of an arbitration clause in a contract made by them before a dispute has arisen. As a matter of good practice, you should take note as to whether the contracts you enter into, have such arbitration clauses.

The attraction of arbitration is that it is a much-simplified version of a trial involving less complicated rules and procedures. Arbitrators have more flexibility than Court judges to decide on how the arbitration should proceed, and on the amount of weight to be accorded to the different types of evidence presented. It enables the parties to adopt a framework which incorporates a mix of procedures and legal practices that both parties are comfortable with, often only subject to the rules of the arbitration centre chosen by the parties. This is of particular importance where parties are from different cultural, legal and linguistic backgrounds; or are geographically far apart.

The role of an arbitrator is similar to that of a judge, though the procedures may be less formal. An arbitrator is usually an expert in certain industries.

The general types of disputes that use arbitration are:

- Commercial;
- Construction/engineering;
- Corporate;
- Shipping/maritime; and
- Trade and insurance.

Why choose arbitration?

1. *Private method of dispute resolution*

   Arbitration enables parties to keep their dispute private. The hearing will take place in private at a neutral venue and the final award is not made known to third parties. Unlike litigation, where the claim form is a public document, the arbitration hearing does not take place in the formal surroundings of a Courtroom and, generally, a party cannot use publicity to bolster its case or force a settlement.

2. *Flexibility to tailor to the needs of parties*

   In arbitration, the parties can choose their own arbitration rules or select their own procedures. It is important, therefore, that when

negotiating a contract, the parties take time to consider how any arbitration is going to be run.

However, parties also have the option of choosing to adopt ready-made sets of rules, or alternatively, an amended version of them. Several bodies and institutions have produced what are generally fair and commercially acceptable rules for conducting arbitrations – for example, the International Chamber of Commerce and United Nations Commission on International Trade Law. Parties do not, therefore, need to spend hours drafting their own arbitration rules and yet more hours negotiating them. In litigation, however, the Court rules will dictate the procedure and frequently they are inflexible and cannot be avoided.

The parties are also given the flexibility to decide on the number of arbitrators (usually one (1) or three (3)) and can also appoint their own arbitrators. Therefore, they may appoint, as arbitrator, experts in the area of dispute having skill and experience not found in the ordinary Courts and who are sometimes better able to view the dispute in its commercial setting.

3. Finality in award

Unlike mediation, an award made by the arbitrator is binding. There is limited scope for appeal after the award is given. International awards are enforced by national Courts under the New York Convention, which permits such awards to be set aside only in very limited circumstances. More than 140 States are party to this Convention.

Arbitration process

1. A party wishing to commence arbitration, the claimant, will file a notice of arbitration and serve this notice on the other party, the respondent.
2. Arbitrators can be appointed directly by the parties.
3. The parties and arbitral tribunal will meet to discuss and agree an appropriate process and timetable at a preliminary meeting.
4. The Claimant will set out a statement of claim, which provides a summary of the matters in dispute and the remedy sought.
5. The Respondent will admit or deny the claims. The Respondent may also introduce a counterclaim.
6. The parties will exchange relevant documents and then review each others' documents.

7. The hearing will take place at a time and location agreed between the parties and the arbitral tribunal.
8. The arbitral tribunal will write its decision in the form of an award which the successful party can then enforce against the losing party.

Other Useful Resources

State Courts: www.stateCourts.gov.sg

Supreme Courts: www.supremecourt.gov.sg

Singapore Mediation Centre: http://www.mediation.com.sg

Singapore International Arbitration Centre: www.siac.org.sg

The Law Society Arbitration Scheme: http://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Arbitration-Scheme

The Law Society Mediation Scheme: http://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Mediation-Scheme



"Well, yes, there are some alternative modes of dispute resolution that haven't quite been embraced by our Courts..."

CHAPTER 5
INSURANCE

"It is always wise to look ahead, but difficult to look further than you can see."

– Winston Churchill

What is Insurance?

Insurance is a form of risk management where the person or business being insured pays a premium to another entity – usually an insurance provider – who in exchange promises to cover the costs of potential loss to the insured person or business. Insurance allows individuals and businesses to protect themselves against significant potential losses and financial hardship at affordable rates.

Determining Appropriate Insurance for an Artist or Art Business

There are numerous kinds of insurance for artists to consider, and it may not always be clear which types of insurance are relevant for which type of artist or art business. As a general guide however, the type of insurance an artist or art business need will depend on a variety of factors, including:

- *The kind of work the artist or art business does*: Visual artists will have different concerns to performing artists, and may be more interested in insurance related to protecting the value of art pieces and related assets, whereas performing artists may be more interested in protection against potential liability from third parties who are attending a performance or a workshop.
- *The types of assets the artist or art business owns*: In many cases, the assets that an artist owns is the art itself or the tools of their trade, whereas for other artists, the assets may be merely incidental (albeit important) to the art they create. For a painter, the most important asset is his or her paintings, whereas for a theatre production company, it may be its studio.

- *The potential liability the artist or art business may owe to third parties*: Some artists may not interact directly with the public, whereas other artists' art and businesses may depend on it. For instance, a dance instructor who runs a weekly workshop would come into contact with many students, whereas a sculptor may never meet the visitors to his gallery. Regardless, every artist and art business should consider how their work may cause injuries to members of the public and take the necessary precautions.

Bearing in mind the above three (3) factors, it becomes easier to decide what kinds of insurance are relevant for you or your art business. Insurance can also be divided into two (2) overarching categories: (1) insurance of assets and (2) insurance against liability.

You may want to consider the following insurance of assets:

- If your business deals with artwork, you will require insurance which covers the value of the artwork that you are handling, including the transportation of the artwork to and from galleries and exhibitions, the display of the artwork and its storage. Your artwork may also come in digital form, in which case you may want to consider ways of insuring your soft data, as opposed to your physical artwork.
- If your art business revolves around a studio, you may require insurance which protects the building and facilities against damage. Note that if you run your studio from your place of residence, your pre-existing domestic insurance policy may not cover damages which arise in connection with the use of your home as an art studio.
- Many artists' profession requires them to handle materials and equipment which are needed for their art. These materials and equipment are often expensive and crucial to the art itself. For example, it would be shrewd for a violinist to insure his violin against damage.
- Rights to the art itself are assets, and you may want to protect the inherent intellectual property rights in the art, so that you can control how the art is used and distributed.

Insurance against liability is equally important:

- The space in which your art is performed or presented may be open for public visitation. In those cases, you would want insurance against claims for injury to a member of the public or damage to their property.

- If your business runs workshops or classes, you may want to consider taking out insurance against claims for injury to those attending the workshop or class and damage to their personal property. Furthermore, in some cases, depending on the kind of art you teach, you may consider taking out insurance against claims for injury or damage resulting from professional advice you have given in your capacity as a professional advisor.
- If your art involves the creation and distribution of products, you may consider getting insurance to protect against claims for injury or damage resulting from the use of those products.
- If, by running an art business, you are also an employer or even a director or manager of a company, then you should consider taking out insurance to protect yourself in your capacity as an employer, director and/or manager.



"No, I'm afraid you cannot claim for your show's bombing under your policy's fire damage clause."

Specific Types of Insurance to Consider

Having considered the types of insurance for artists and art businesses more generally, it is important to know the specific types of insurance and exactly what they do:

- *Public liability insurance*: When you own or lease a property, you owe what is called a duty of care to those who are present on that property, to ensure that their time spent on the property is safe and free of hazard.

Performance artists and those who run art businesses may consider taking out insurance against claims by third parties for injury or damage to their property at any premise at which they work. Such insurance may also protect against claims from the public for accidents, injury and insults. When events are held at external venues (for example, on government-owned land or property), public liability insurance may be required as a condition of the venue being made available.

- *Professional liability insurance*: This type of insurance protects against claims made against an artist for professional advice the artist has given to another party.
- *Property insurance*: These kinds of policies provide financial reimbursements to the owner or renter of a structure and its contents in the event of damage and theft. Circumstances which are normally covered by such insurance include damage caused by fire, smoke, wind, lightning, theft, and if you live in colder countries, damage caused by ice, snow and hail.
- *Product liability insurance*: This type of insurance protects against claims for injury or damage resulting from the use of a product.
- *Management liability insurance*: This type of insurance protects directors and managers of art businesses from claims against them in their capacity as directors and/or managers of the business.
- *Business interruption insurance*: Disruption caused to a business after a fire or damage to property may place great financial strain on a business during the period of restoration. Business interruption insurance protects against losses after damage has occurred and usually covers the income you would have earned during the restoration period had the damage to property not occurred. The insurance policy may also cover operating expenses that continue even though business activities have temporarily ceased.
- *Equipment/instrument coverage insurance*: Performers such as DJs, musicians and those involved in theatre productions that use equipment and instruments may insure equipment and instruments used in their trade against theft and damage.
- *Artwork insurance*: Those who deal with fine art and collections may take out insurance to protect art assets such as paintings and sculptures against damage and theft, and may also insure those assets against future restoration and conservation costs.
- *Digital/data/cyber insurance*: This is relatively new form of insurance which protects against the loss of digital copies of files and documents on a computer or similar storage device. Loss may come in many forms, including physical damage to



"As far as I am aware, there is no insurance policy specifically for con artists."

hardware components, failure of software components or even cyber-attacks. In the past, only the hardware components of computers were insurable. Even today, data insurance policies are generally only available to large corporations as riders on their existing commercial insurance policies. That being said, there are policies in Singapore which are open to small and medium-sized firms, with affordable premiums. If your art business deals with the creation of art in digital form, then this type of insurance is useful in addition to steps you may already be taking to protect your digital information.

- *Intellectual property insurance*: Intellectual property insurance comes in many forms. The first type of intellectual property insurance has to do with covering legal expenses in connection with enforcing or defending intellectual property rights over a product. This kind of insurance will cover legal costs of you taking action to stop others infringing intellectual property rights in your art, or costs associated with defending allegations that you infringed someone else's intellectual property rights.

The second type of insurance available has to do with protection against lost revenue as a result of losing intellectual property rights.

- *Work injury compensation insurance*: Employers in Singapore are required to buy work injury compensation insurance for all employees doing manual work, regardless of salary level, and all employees doing non-manual work, earning less than S$1,600 a month.
- *Employer's liability insurance*: This type of insurance protects employers from major financial loss if a worker experiences a job-related injury or illness that workers compensation does not cover.

Things to Look Out for

There are certain things to consider when choosing an insurance policy. The following is a non-exhaustive list of things to take note of:

- *Under-insurance*: It is important to be adequately insured. You are under-insured when (1) the sum insured (the maximum pay-out in the event of loss) is less than (2) the value of the items and/or business insured.

  To prevent this from happening, you should obtain a proper valuation of your items and/or business before taking out any insurance policies, to cover the full monetary value of your assets. If you are constantly producing artwork, and the overall value of your work exceeds the limit of your original coverage, you should re-evaluate your policy with the insurance provider. Further, works in progress or unsold work have only a hypothetical value. Any loss of such artwork will need to be justified by evidence of past sales or other equivalent measures. The insurance policy may also have a cap, where insurers will only pay up to a certain amount. It is important to speak to your insurance provider and carefully read the terms and conditions of the policy.
- *Scope of coverage*: Generally, the insurance policy will cover physical loss, but will not cover wear and tear, inherent defects, gradual deterioration and pest and vermin. It is important to find out the exact scope of coverage, so that you can protect against the events that are not covered. If your work involves travel, you should find out if the policy offers worldwide coverage. Also, artwork goes through various phases of completion, from pre-production to finalisation to transport. You may require multiple policies to cover the various stages. Again, speak to your insurance provider and always read the fine print.
- *Failure to protect property*: In circumstances where there is a known risk of damage to property, the insured has a responsibility to avoid that risk to be able to claim insurance, and the assumption

is that they will do so. If the insured fails to reasonably avoid that risk, any damage to their artwork resulting from that known risk will normally not be covered by the insurance policy. For example, if the basement of a building is routinely flooded during heavy rain, the insurance provider will not cover damages to artwork which is stored in the basement.

- *Whose responsibility to insure*: If you are working with another party, for instance, with an art gallery, you should find out if that party has its own insurance. A reputable organisation should have its own insurance coverage. You should always find out the scope of their coverage and ascertain if that coverage meets your needs. The organisation may also require you to be insured, as you are the owner of the work, until the work is sold.

Things to Look Out for

Illustrative Example

You host a weekly acting workshop with a group of regular attendees. The workshops are normally hosted at a small theatre house that you own, which is going to be venue of an upcoming performance that you have been working on for months.

During one such workshop, you explore how fire may be used on stage during a performance. One of the members of your group inadvertently leaves a lit candle on a windowsill backstage, causing the curtains to catch fire. In the ensuing chaos, a member of your acting group is severely burned and a large portion of the area behind the stage is destroyed.

Furthermore, the musical ensemble which was hired to play at the upcoming performance of your show left all of its instruments backstage, all of which were taken by the fire. To make matters worse, a worker who was manning a ladder and working on the lights on stage during your workshop fell and broke his elbow.

Although no one was fatally injured, the extent of the damage caused by the fire means that the theatre house needs significant repairs which are estimated to take four (4) weeks. As a result you are forced to cancel your upcoming

show and refund the cost of the tickets to the show which have already been purchased. You are also unable to undertake any workshops at the theatre house during those four (4) weeks.

Leaving to one side who was responsible for the fire, as the owner of a small theatre house, you ought to have property insurance to protect against the damage caused by the fire to the backstage of your theatre. With public liability and professional liability insurance, it is likely that you would be protected against claims by the member of your acting group who was burned in the fire. Work injury compensation and/or employer's liability insurance would protect you against the claims by the worker who fell from the ladder and broke his elbow.

Damage to the musical ensemble's instruments could both be covered by your public liability insurance and property insurance, and if the musicians themselves had taken out equipment/instrument coverage, then the destruction of their instruments would be covered under that policy as well.

Furthermore, the loss of revenue you will suffer from cancelling your upcoming show and not being able to host acting workshops could possibly be covered by business interruption insurance.

When should I take out insurance to cover my artwork?

- When your artwork is of significant value.
- When you are responsible for storing, transporting and displaying your artwork to the public.
- Even where the art you make itself is not insurable, it makes sense to insure the tools of your trade which allow you to create art.

When should I consider protecting myself for injury or damage that my art may cause to others and their property?

- If you own or rent premises which are open to the public.
- If you run classes or workshops which involve physical movement.



"I'm afraid you've misunderstood: A comprehensive policy is not one that insures you from people not comprehending your work."

How do I protect my digital art from loss and damage, or from misuse by other parties?

- Consider insuring your data from loss you may suffer in addition to properly backing up your digital information.
- Protecting your intellectual property rights is crucial to ensuring you are given credit for the art you create; taking out intellectual property insurance allows you to protect your rights in Court.

How do I insure myself as a business owner, and not just as an artist?

- Take out insurance to protect any properties you may own or rent.
- Consider insuring yourself against possible claims from employees and workers.

- If your income depends on your being able to continue to make art and perform, consider taking out business interruption insurance to cover financial losses.

Which of my assets should I insure?

- Any of your assets which are of significant value.
- Any assets which you consider crucial to the creation of your art.

Other Useful Resources

Ministry of Manpower's website: Workplace injury compensation insurance
http://www.mom.gov.sg/workplace-safety-and-health/work-injury-compensation/work-injury-compensation-insurance

Art Business Info website: Insurance for art and artists
http://www.artbusinessinfo.com/insurance-for-art-and-artists.html

CHAPTER 6

LAW OF CONFIDENCE/NON-DISCLOSURE AGREEMENTS

"Keep the problems of clients and prospects confidential. Divulge information only with their consent."

– A.C. Nielsen

Overview

The law relating to the protection of confidential information in Singapore is also commonly known as the law of confidence. There is no single statute that specifically protects the non-disclosure of confidential information, although some statutes deem certain types of information to be confidential, such as the Banking Act (Cap. 19, 2008 Rev. Ed. Sing.), Trust Companies Act (Cap. 336, 2006 Rev. Ed. Sing.), etc. For the purposes of this Chapter, these are less relevant and will not be considered.

Nevertheless, Courts have long recognised the rights of persons to have certain information protected, if that information is confidential. There are various philosophical theories behind why it is necessary to protect confidential information, ranging from the concept of good faith or moral conscience, to proprietary rights over the information, or possibly, the prevention of unfair competition. In any case, what is clear is that to succeed in a claim for a breach of confidence, the following elements must be made out:

(a) the information must be "confidential information";
(b) the person receiving the information, the recipient, must be under an obligation of confidence; and
(c) the information has been used in an unauthorised manner, and potentially to the detriment of the party who communicated that information.

What is Confidential Information?

To a layman, it can be difficult to decide whether the information you hold is confidential. Simply put, confidential information refers to information which has the necessary quality of confidence. It



"Ah, here comes our expert in non-disclosure agreements."

encompasses all information which any party has an interest in keeping confidential. Information that is not freely known to the public at large, unavailable in the public domain or that is not public knowledge will all generally be considered to be confidential information.

Are there any tell tale signs that would point towards information being "confidential"? Often, information that is marked "confidential" would be thought to be "confidential information". However, the mere marking of information as "confidential" would not be sufficient – for example, if the information is freely disseminated to everyone who requests for it, it would be illogical to automatically assume such information is indeed confidential, regardless of how it has been labelled. Similarly, highly secret information, such as business plans or strategies cannot be brushed aside as not being confidential simply because that information was not marked as such. Ultimately, you will need to consider the circumstances under which you have received the information, the type of information you are holding, and the person from whom you have received the information in order to be able to judge whether such information is confidential.

Some examples of information that the Courts have held would be protected by the law of confidence include: (a) details, bills and other receipts revealing the personal affairs of a person; (b) formulas and processes developed by companies in the course of their day-to-day

business; and (c) advice received from a lawyer. Information need not be original, novel or ingenious in order for it to be "confidential."

How Do You Know if You should be Keeping Information that You Come Across Confidential?

You are obliged to keep information confidential if (a) you are under a contract which imposes such an obligation on you; or (b) if the circumstances are such that any reasonable man standing in your shoes would have realised that upon reasonable grounds, the information had been given to you in confidence (see section on "The test of "reasonableness"" below).

Contractual obligations

Very often, when negotiations are ongoing and information that is of commercial value to the other party is provided, the recipient is required to sign a non-disclosure agreement. These agreements impose a direct obligation on the recipient not to disclose or use the information that has been obtained. Another situation where there may be contractual confidentiality obligations would be in an employment contract – the employer very often includes express provisions in the contract to state that employees are to keep information gained in the course of employment confidential.

The test of "reasonableness"

The mere fact that there is no written term which requires you to keep information confidential, however, does not automatically let you off the hook. Where there is nothing in writing, the question that needs to be asked is: would I be expected to keep the information confidential notwithstanding the lack of documentation? Courts have found that where information is handed over during business negotiations and related to trade secrets, the recipient ought to keep such information confidential. Likewise, employees also owe an implied duty to their employers to not disclose any of the employers' confidential information. Such employees are also obliged to maintain the confidentiality of their employers' trade secrets even after employment has ceased. Factors that have been considered to be relevant in determining whether a duty of confidence should be imposed in a post-employment situation include (a) the capacity of the employee in question (on the basis that low ranking employees are unlikely to habitually handle confidential information); (b) the nature of the information (information that is widely disseminated is less likely to be a trade secret) and; (c) whether the employer impressed upon the employee, the confidential nature of the information.



"I regret to inform you that generally, the law will not enforce a pinky promise."

Is there a Connection between the Information Disclosed and the Harm Caused?

Even if you have disclosed or used confidential information, the claimant must also show that the information has been used in an unauthorised manner, and in most cases, to the detriment of the person whose information has been disclosed. This depends ultimately on what information has been disclosed, and whether that information has actually been used. For example, the Courts have previously found that even though confidential information may have been disclosed to a recipient during the process of negotiations, if such information has not been used by the recipient, there is no causal connection between the information disclosed and any damage suffered by the discloser.

Is there any Exception to the Rule against Disclosing Confidential Information?

There is one limited exception to the obligation to keep confidential information confidential – and that is often referred to as the "iniquity" rule. This exception allows a recipient to disclose confidential information where it is in the "public interest" to do so. This is a very stringent test, and the Courts will, in considering whether the information should have been disclosed, balance the interests of maintaining confidentiality against the disclosure of information to

ensure that wrong-doings were not concealed as a result of an obligation to maintain confidentiality. Note that what qualifies as being in the "public interest" is determined by the Courts. In addition, this exception is not blanket approval for you to disseminate confidential information to everyone – such disclosure, even if in the public interest, should be limited only to persons who needed to know the information.

How can I Protect Myself if I am Disclosing Confidential Information?

If you know that you will be disclosing confidential information that you do not want appearing in the public domain, you may want to consider protecting yourself against unauthorised disclosure by having the recipient of the confidential information sign a confidentiality agreement or a non-disclosure agreement. This allows you to put the recipient on notice that the information you are about to share is confidential, and also allows you to specify which information provided is to be treated as confidential. It also allows you to state the time period within which the information is to be kept confidential, set out procedures for the return of such confidential information in the event the negotiations or relationship does not pan out as hoped for; and also set out conditions under which disclosure of the information is allowed (if at all).



"I wish I could explain what happened, but I'm bound by the terms of a confidentiality agreement."

While the existence of an agreement does not stop a person who wishes to unlawfully disclose confidential information from doing so, the existence of an agreement would more likely than not deter the recipient from disclosing or using confidential information; and should also mark out the circumstances under which the confidential information may be disclosed. An agreement would therefore minimise uncertainties that may otherwise exist.

Illustrative Example

Y was the senior executive of a company, A Pte Ltd. X was Y's personal assistant, and had access to Y's personal information, including phone bills, credit card receipts and access to Y's personal e-mail accounts. Y's girlfriend Z, is a high profile actress and their relationship is under wraps, given Z's popularity. X became aware of their relationship in X's capacity as Y's secretary. X also discovered that Y had been submitting claims relating to Y's affair with Z for reimbursement by A Pte Ltd.

Would X be entitled to disclose the information relating to Y's relationship with Z?

In this scenario, the information about the affair would likely be construed as "confidential information", and X would owe an obligation of confidence not to use or disclose that information, because X was in a position of confidence, as Y's personal assistant. However, X would nevertheless be entitled to disclose the information to the relevant persons (A Pte Ltd and the police) in order for the employer to investigate the allegations of false reimbursement claims and for the police to investigate any criminal offence. X would not be entitled to disclose the fact of Y's relationship with Z to all and sundry.

Would the analysis be different if there were no false reimbursement claims?

Possibly yes, as there would unlikely be any viable defence on the part of X, and Y could arguably succeed in an action against X for breach of confidence.

FAQs

What do I do if I am unsure whether the information I am about to disclose or use is confidential information?

When you are in doubt about the nature of the information you are in possession of, or whether you should even be disclosing the information, seek the consent of the person from whom you have obtained such information. Never assume that you are entitled to disclose or use any information simply because it has been given to you, or because you have chanced upon it. The consent does not need to be in writing, although as a matter of good practice, one should record that approval in writing, even if it is by way of more informal means, such as by e-mail.

Is there a format for a non-disclosure agreement or a confidentiality agreement?

There is no fixed format that needs to be followed for such an agreement to be enforceable. However, key terms that should be included are (a) a description of the confidential information that will be disclosed; (b) how long the confidentiality obligation is to last; (c) the obligations of the recipient if the agreement is to terminate (for example, the recipient is to immediately return all the documents provided); and (d) the circumstances under which any disclosure is allowed (for example, only in circumstances required by law, or where the information is already in the public domain).

CHAPTER 7
COPYRIGHT ESSENTIALS

"I think Copyright is moral, proper. I think a creator has the right to control the disposition of his or her works – I actually believe that the financial issue is less important than the integrity of the work, the attribution, that kind of stuff."

– Esther Dyson

What is Intellectual Property?

Intellectual property refers to creations of the human mind. Some common examples of intellectual property are inventions, product brands, films and computer software.

There are several types of intellectual property. Each type covers different creations and is governed by different laws in Singapore. You can read more about them on the Intellectual Property Office of Singapore ("**IPOS**") website. The types of intellectual property which you are likely to encounter in your day-to-day activities are trade marks, patents, registered designs, copyright and trade secrets.

Depending on the type of intellectual property you wish to protect, you may need to register them with IPOS in order to obtain protection under Singapore law.

The law gives you, as the intellectual property owner, an exclusive right to use your intellectual property. Intellectual property is also considered a form of property which you can licence, assign or sell to third parties.

Intellectual property protection is territorial. This means that intellectual property which is protected in Singapore does not enjoy the same recognition or protection overseas. If you wish to obtain overseas protection for your intellectual property, you may need to register your intellectual property separately in those countries.

The recourse which you may seek in an action for use of your

intellectual property without your consent includes: (i) an injunction to stop the infringing action; (ii) damages for the loss suffered; and/or (iii) the profits gained by the infringing party at your own expense.

What is Copyright?

Basically, copyright allows an author, creator or artist to protect your work from being copied by another without permission.

Copyright is everywhere – from that song you wrote for your dance recital, to the congratulatory poem written for your sister when she got married. Further, when we listen to music on the radio or watch a movie, we are availing ourselves of materials that are copyrighted.

Why is Copyright Important?

1. *Copyright is an asset*: Should you create an original creative piece of work, it may have considerable value in the future and could potentially be sold and/or used as financial collateral that gives you, as the creator, ownership of your work, and also allows that work to be traded.
   Further, copyright lasts for a long time and it is possible for it to be passed down as part of an estate.
2. Copyright provides protection: The conferment of exclusive legal rights of copyright on authors, artists, musicians, playwrights, programmers and others involved in the copyright and related industries would prevent others from unfairly appropriating or dealing with their works. Therefore, should you discover that a third party is using your work without your knowledge or permission, you have legal grounds to pursue an action against them.
3. Copyright is universal: It is a far-ranging right that permeates almost every corner of this universe and there is always a chance that you may unintentionally infringe a third party's copyright. It is present in the newspapers you read, the photographs you take as well as the music you listen to, amongst others. As a member of the general public, copyright affects whether you can use creative works and how you may go about doing so.

What can be Copyrighted?

In a nutshell, copyright refers to a legal right which protects the use of your work once an idea has been expressed. This exclusive legal right allows the owner to commercially exploit his or her work, by transferring or licensing it to a third party.



"Oi! Don't copy my homework, or I won't just tell the teacher, I'll instruct my lawyer to sue you for copyright infringement!"

The following are some common examples of subject matter which **can** be protected by copyright law:

- Literary works (e.g. written works, lyrics in songs, articles in journals/newspapers);
- Dramatic works (e.g. works performed from scripts, choreographic scripts for shows/dance routines);
- Musical works (e.g. melodies);
- Artistic works (e.g. photographs, paintings, sculptures, buildings or models of buildings);
- Published editions of the above works (the style, arrangement, and appearance of the letters, numbers, and symbols in a published work – e.g. a newspaper article);
- Sound recordings (e.g. aggregate of sounds recorded on tapes and CDs);
- Films (e.g. aggregate of visual images and sounds recorded on tapes, video compact discs);
- Television and radio broadcasts;
- Cable programmes; and
- Performances.

Not everything can be protected by copyright however, and the following are some common examples of subject matter which **cannot** be protected by copyright:

- Ideas or concepts;
- Discoveries;

- Procedures;
- Methods;
- Works or other subject matters which have not been made in tangible form in a recording or writing; and
- Subject matter that is not of original authorship.

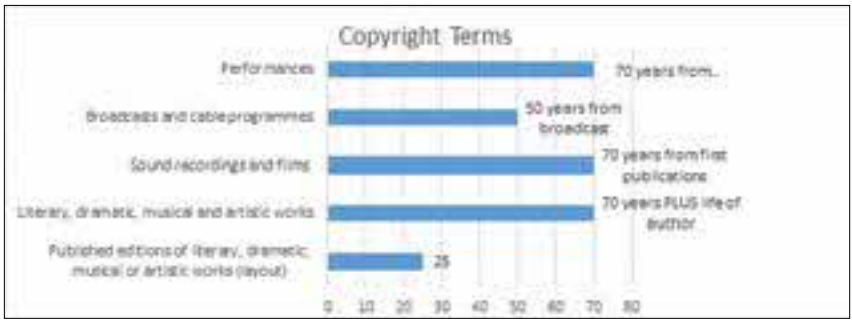
How Long does Copyright Protection Last?

Copyright provides authors, creators and producers with the legal rights over their creative works for a limited period of time. Once that period of time is over however, the creative works in question become part of the public domain and is free to be utilised by the public.

In this regard, the term of protection granted varies according to the type of copyright concerned:

- *Literary, dramatic, musical and artistic works:*
  70 years from the end of the year in which the author died or dies. Should the work be published after the death of the author, it will last for 70 years from the end of the year in which the work was first published.
- *Published editions of literary, dramatic, musical or artistic works (i.e the style, arrangement and appearance of the letters, numbers and symbols in a published work):*
  25 years from the end of the year in which the edition was first published.
- *Sound recordings (a recorded version of a musical work) and films:*
  70 years from the end of the year in which the sound recording or film was first published.
- *Broadcasts and cable programmes:*
  50 years from the end of the year of making the broadcast or cable programme.
- *Performances:*
  70 years from the end of the year of the performance.

What is the "public domain?"
When copyright protection has expired, the creative work falls into the "public domain" and is free for anyone to use and copy without any restrictions.



How do You Obtain Copyright Protection?

An author automatically enjoys copyright protection as soon as he or she creates and expresses his or her original work in a tangible form, such as in a recording or writing. Therefore, there is no need to file for registration to obtain copyright protection. In contrast with trade marks, designs and patents, Singapore does not have a system for registration of copyright, and there are no formalities required for copyright to subsist.

Although there is no absolute way to prove that a work is original or indeed created by the author, authors have resorted to a number of ways to try to protect their interests:

- Deposition of a copy of their work with lawyers, or in a depository system;
- Sending a copy of their work to themselves by post and leaving the envelope sealed so that the date stamp and unopened work can establish the date the piece of work came into existence; and
- Make a declaration before a Commissioner of Oaths or Notary Public, stating the facts of ownership and date of creation.

What Exclusive Rights do Copyright Owners Have?

The exclusive rights of a copyright owner vary according to the type of copyright, as follows:

- *Literary, dramatic and musical works:*
  Authors enjoy the exclusive rights to reproduce the work, publish the work, perform the work in public, communicate the work to the public and make an adaptation of the work.
- *Artistic works:*
  Artists enjoy the exclusive rights to reproduce the work, publish the work and communicate the work to the public.

- *Published editions of literary, dramatic, musical or artistic works:*
  The publisher has the exclusive right to make a reproduction of that edition of the work.
- *Sound recordings:*
  The producer of a sound recording enjoys the exclusive rights to make a copy of the sound recording, rent out the sound recording, publish the sound recording if it is unpublished and make available to the public a sound recording by means or as part of a digital audio transmission.
- *Films:*
  The producer of a film enjoys the exclusive rights to make a copy of the film, enable the film to be seen in public and communicate the film to the public.
- *Television and radio broadcasts:*
  The broadcaster enjoys the exclusive rights to make a recording of the broadcast, rebroadcast, communicate the broadcast to the public and enable the cable programme to be seen and/or heard by a paying audience.
- *Cable programmes:*
  The producer of the cable programme enjoys the exclusive rights to make a recording of the cable programme, communicate the cable programme to the public and enable the cable programme to be seen and/or heard by a paying audience.
- *Performances:*
  The performer has the right to authorise the performance to be seen and/or heard live in public, make a direct or indirect sound recording of his or her live performance, make available a recording of the performance to the public in such a way that the recording may be accessed by any person from a place and at a time chosen by him or her, sell, rent, offer for sale, distribute or import such recordings for these purposes, publish a recording of a performance (if not previously published) and communication of the live performance to the public (including broadcasting, internet dissemination and inclusion of the performance in a cable programme).

When are you Disentitled to Copyright Protection?

The general rule is that an author, creator or artist of a piece of work is the first owner of any copyright in it. However, there are certain exceptions to this rule as follows:

- *Employment:*
  Should a piece of work be created by an employee pursuant to the terms of his or her employment, the employer would have ownership in that piece of work.

However, where an employee of a newspaper, magazine or periodical creates a creative work pursuant to the terms of his employment and for the purpose of publication in a newspaper, magazine or periodical, the proprietor would only own the copyright in respect of publication in or reproduction for the purpose of publication in any newspaper, magazine or periodical. For example, if a magazine hires an illustrator to create an artwork for its monthly publication, it cannot use that artwork as the wallpaper of its office premises without the consent of the illustrator.

- *Commissioned works:*
  Subject to a legal contract or agreement, the copyright in certain commissioned works (e.g. portraits, photographs and engravings) may belong to the commissioner of those works, rather than in the author of those works.
  Whilst the commissioner owns the copyright to the commissioned work, should the commissioned work be required for a particular purpose, the author (also known as the commissioned party) still has the authority to stop others from carrying out any act contrary to the particular purpose for which the commissioned work was created. For example, if an individual commissions a photographer to take wedding photographs, the individual owns the copyright to those photographs. However, the photographer may stop a wedding dress boutique from using the photographs in advertisements for its dresses.
  For other types of commissioned works, the ownership belongs to the commissioned party unless both parties (the commissioner and the commissioned party otherwise agree).
- *Transfer by way of license or assignment:*
  Copyright is a form of property and may be licensed or assigned as an entire bundle (i.e. all the distinct rights under copyright) or as a single, distinct right within the copyright bundle (i.e. only the right to reproduce). He can also license or assign the copyright in terms of the whole or part of the copyright period.

Joint and Collective Works

Pursuant to the Copyright Act (Cap. 63, 2006 Rev. Ed. Sing.), "work of joint authorship" refers to a piece of work which has been produced by the collaboration of two (2) or more authors and in which the contribution of each author is not separate from the contribution of the other author or the contributions of other authors. In joint copyright ownership, each joint owner holds an undivided interest in that piece of work. He or she cannot grant a license under the copyright nor can he or she assign the entire copyright without the consent of the other joint party or parties.



"Yes, technically my maid did all the work, but I should still be the one to get the prize because it's a work for hire."

The distinction between joint and collective works is stark – the latter refers to each author creating his or her own piece of work. For example, a collection of short stories by different authors will represent a collective work. Therefore, each author would have individual copyright over the respective short stories written by them.

The © Symbol

The © symbol serves as a notice of claim by the owner that copyright exists in that particular piece of work, but it does not afford the copyright owner any further substantive legal rights or protection.

However, it may come in useful during infringement proceedings when the infringing party puts forward a claim that he or she had no idea that the material was indeed protected under copyright law. By affixing the © symbol, there is little that the other side can then do to rely on this argument.

Other Organisations: Creative Commons

Creative Commons is a not for profit organisation which provides licenses and tools to permit copyright owners to determine the terms under which their material may be used worldwide.

Licensees are able to use the material without the need to seek further express permission from the owner of the copyright, so long as the use conforms to the terms under which the license was obtained. In a nutshell, Creative Commons allows artists and authors to retain copyright and get credit for their own work, whilst allowing others to copy, distribute and utilise the aforementioned creative works.

How do You Obtain Consent from a Copyright Owner?

It is important to obtain consent from the owner of the copyright before utilising his or her creative work. In order to do so, one may contact the copyright owners directly and negotiate for a license to utilise the copyrighted materials. Alternatively, a license may also be obtained through a legally authorised collective management organisation.

A collective management organisation is formed for the purpose of managing the rights of copyright owners in their creative works by administering the licensing of rights, collection of royalties and enforcement of rights on their behalf. A license may be obtained from these collective management organisations, who serve to administer the rights governing use of copyrighted work.

We set out below some collective management organisations in Singapore:

- Composers and Authors Society of Singapore Ltd;
- Horizon Music Entertainment Pte Ltd;
- InnoForm Entertainment Pte Ltd;
- K-Net Music Pte Ltd;
- Music Publishers (S) Ltd;
- Recording Industry Performance Singapore Pte Ltd;
- The Copyright Licensing and Administration Society of Singapore Ltd; and
- Motion Picture Licensing Company (Singapore) Pte Ltd.

How do You Enforce Copyright?

Copyright infringement occurs when permission is not obtained from the owner of the copyright to carry out exclusive acts reserved to him or her. In a copyright infringement dispute, the Court takes into consideration the quantity as well as nature of the relevant portion of the work that has been copied/reproduced.

Copyright infringement also occurs when one deals commercially with infringing copies, for example:

- If a person imports infringing copies for sale or distribution;
- If a person sells (including distribution for trade or any other purpose to an extent that affects prejudicially the copyright owner) or lets for hire infringing copies; and
- If a person offers infringing copies for sale or hire by way of trade.

Remedies

Remedies are measures of relief that the Court is able to grant to a person whose rights have been infringed. In civil actions, remedies for copyright owners include injunctions, damages (actual damages or statutory damages) and account of profits. The Court may also order additional damages to be paid by the infringing party to the copyright owner.



The copycat litigation could have reached an amicable settlement much earlier, but the parties were far too meow.

Criminal Offences

Criminal offences under the law of copyright in Singapore include the manufacture of infringing copies for sale, sale of infringing copies, possession or importation of infringing copies for the purposes of sale, hire or distribution for trade, and distribution of infringing copies for trade.

The penalties involved for manufacture for sale, sale of infringing copies and possession/importation of infringing copies are a fine not exceeding S$10,000 per infringing copy (with a ceiling of S$100,000 per charge) and/or imprisonment up to five (5) years.

With regard to the distribution of infringing copies for trade, the penalties involved are a fine not exceeding S$50,000 and/or imprisonment up to three (3) years.

The making or possession of an article designed to make infringing copies (e.g. some form of machinery for manufacturing infringing copies) is also an offence, and the penalties involved are a fine not exceeding S$20,000 per article and/or imprisonment for up to two (2) years.

Border Enforcement

There are also measures which allow for the restriction of importation of infringing copies by the customs authorities. A copyright owner may notify the Director-General of Customs that there is an impending importation of infringing copies of his or her copyright material. The Director-General of Customs will then take the appropriate action to seize the alleged infringing material.

Further, there are also measures for the seizure and forfeiture of any infringing copy or article. An authorised officer may detain copyright material which he has reason to believe are infringing copies. Upon detention, the copyright owner shall be informed of the situation and if no further action is taken by him or her, the detained copies could then be released.

Exceptions to Copyright Infringement

Pursuant to the Copyright Act, there are certain exceptions to copyright infringement wherein you may in fact utilise copyrighted work, without obtaining permission from the copyright owner:

- *"Fair dealing":*

  A certain amount of copying for purposes that are legitimate (e.g. for the purposes of research or education) is allowed so long as it is a "fair dealing". In order to determine whether such copying falls under "fair dealing", the following factors are taken into consideration:

  (i) purpose and character of the dealing, including whether the aforementioned is commercial in nature or is for non-profit educational purposes;

(ii) nature of the work;
(iii) amount and substantiality of the portion copied compared to the whole work;
(iv) effect of the dealing upon the potential market; and
(v) possibility of obtaining the work within a reasonable time at an ordinary commercial process.

Where the copying is for the purposes of research and education, it shall be taken to be a fair dealing, as long as the copying limits are observed (i.e. for a published piece of work of at least ten (10) pages, the copying limits are up to ten per cent (10%) of the number of pages or one (1) chapter, whichever is greater).

- *Other exceptions:*
  (i) Carries out copying for the purposes of judicial proceedings or seeking/rendering professional legal advice; and
  (ii) Making a copy from an original copy of a computer program for the purpose of utilising the duplicate as a back-up.

Is Your Copyright Effective Overseas?

A copyright work created by a Singapore citizen may be protected in other countries, by way of international agreements that Singapore has entered into.

An example would be the Berne Convention for the Protection of Literary and Artistic Works (the "Bern Convention") (which Singapore has acceded to in 2008) which is a convention on copyright protection of literary and artistic works, including films.

Under the Berne Convention, works originating in one contracting state is afforded the same protection in each of the other contracting states as the latter grants to the creative works of its very own nationals. For example, as Singapore and Japan are both contracting states of the Berne Convention, any creative works originating in Singapore will also be afforded that same protection in Japan.

Illustrative Examples
Question: If a character sings or hums parts of a tune from a song for a short film or feature film, do the film producers need to pay copyright for the use of the music?

Answer: As a public performance (the short film or feature film will be shown to the public) of copyright work is involved, the film producers should therefore consider obtaining the relevant license from the copyright owner, to sing/hum parts of that particular tune.

Question: In many contracts from production houses and clients, there is a clause stipulating that the copyright for all creative work of full-time and part-time staff created during the term of the contract, belongs to the employer. Is this a fair clause? If the staff work during weekends on a novel or web series, i.e. on their own time, does the employer have rights to claim copyright to such a work?

Answer: Should any piece of work be created by an employee pursuant to the terms of his or her employment (usually a contract/agreement), the employer would have ownership in that piece of work.

If the staff member works during weekends on a novel or web series, the employer could still have ownership over the work, but this would be quite dependent on the terms as stated in the contract/agreement and whether such work was created pursuant to that staff member's "Course of Employment".

Question: Is it true that registering a script i.e. copyrighting it, is only a time-stamp and doesn't really protect the writer?

Answer: There is no copyright registration system in Singapore and therefore, a script cannot be registered as such. An author enjoys automatic copyright protection as long as he or she creates and expresses his or her work in a form which is tangible.

Question: Are there any limits to selling stock footage of buildings, tourist attractions, exterior views of residential dwellings?

Answer: As long as these pictures (stock footage) are taken by the author himself, there should not be a problem if he were to sell stock footage of these buildings, tourist attractions and exterior views of residential dwellings.

FAQs

Does copyright need to be registered?

Not in Singapore, as no formal copyright registration system exists in Singapore. An author enjoys automatic copyright protection as soon as he or she creates and expresses his or her work in a form which is tangible.

Can I play copyrighted music over the public address system at a public event?

As this is a public event, you would require the consent of the copyright owners. You could approach the Composers and Authors Society of Singapore Ltd in order to obtain the relevant licenses.

Would I be infringing copyright if I were to paraphrase an article?

You would not be infringing copyright if you were to merely express the information reflected in the article in your own words, as it is the expression of ideas which is protected by copyright rather than the information itself.

Can I grant a copyright license to a third party if I am one of the joint authors of a copyrighted work?

No, you would have to obtain the consent of the other joint authors of the copyrighted work, in order to grant a copyright license to a third party.

Other Useful Resources

Intellectual Property Office of Singapore: www.ipos.gov.sg

World Intellectual Property Organisation: www.wipo.int

Creative Common: https://creativecommons.org/

Composers and Authors Society of Singapore: http://compass.org.sg/

CHAPTER 8
TRADE MARK ESSENTIALS

"When in Rome, I must do as the Romans do. When in America, copyright and trademark."

– Bikram Choudry

What is a Trade Mark?

A trade mark is any sign or symbol used by a business that helps a consumer identify which business a product or service comes from.

Why should You Care about Trade Marks?

Many business owners and celebrities want to trade mark various things, from names to yoga poses. Well, these days, a lot of things can be considered as trade marks. While Bikram Choudhury did not manage to copyright his style of yoga, he certainly succeeded in trade marking "BIKRAM YOGA" in the United States at least for the following services: "conducting classes, seminars, conferences, and teaching training in the fields of yoga instruction, yoga philosophy, yoga theory and practice, allopathic physical systems, integration of medical and yogic systems, yoga therapy, marketing of yoga instruction, physical fitness, meditation, mental training and discipline, and health, and distributing course materials in connection therewith."

The following is a list of top ten (10) reasons to care about trade marks:

1. *Trade marks make it simple for consumers to find you*: Trade marks help to distinguish your product and services from those of your competitors and help to identify you as the originating source. It helps to capture the consumer's attention and make your products or services stand out, because consumers would more likely remember the product or services with a consistent level of quality of the same.
2. *Trade marks help avoid marketplace confusion*: Trade marks help consumers protect themselves by allowing them to make



"Well, Miss Kitten, to forestall any trademark litigation, you could consider legally changing your name to 'Pussy' and ensuring that no one ever greets you in public."

reference to branded (and trusted) products or services during purchase. This way, consumers will not purchase an undesired good or service unintentionally.

3. *Trade marks are among the most economically efficient communication tools*: Trade marks make decision-making more efficient for consumers as they can quickly select the desired product or service from among competitive offerings, due to easy differentiation. They can also, in a single brand or logo, embody intellectual and emotional attributes about your company, reputation, products and services and consumers' lifestyles, aspirations and desires.
4. *Trade marks are your most enduring assets*: Generally, trade marks are probably one of the few assets that can offer long-term competitive advantage, and an asset that can appreciate in value over time. You could probably use it as leverage at the appropriate time.
5. *Trade marks support stronger sales volume, stronger margins, and can provide price maintenance legally*: It is often difficult to see significant differences among competing products. As such,

the trade mark can be a critical factor in driving the consumer's purchase decision. Further, in a price competitive situation, the additional price that you could charge might still be acceptable to the consumer because of your brand.

6. *Trade marks can make hiring easier*: Brands that are popular generally reflect successful businesses, and as such, more job seekers would be attracted to your business. This could be due to the perception (real or otherwise) that there are better employment opportunities, remuneration, benefits and potential career advancement.
7. *Trade marks can be a bargain*: The fees that you pay to get a trade mark registered in many countries is typically not so high, and considered as value-for-money, given that trade marks potentially have an infinite lifespan. As long as the trade mark is used in the course of trade, and renewals are paid, the trade marks could remain protected and valid for as long as you want them to. More importantly, after all that "investment" in getting them registered, trade marks can be licensed or sold for more.
8. *Trade marks are a very flexible and creative form of intellectual property protection*: A whole lot of things can be registered as trade marks: words, slogans, alpha-numeric, non-Roman alphabet words and characters, logos, shapes, colours and many more, depending on the jurisdiction.
9. *Trade marks open the way for businesses to most effectively use the internet*: Traditionally, marketing is done using print and other media. These days, the internet is so important to marketing, that the use of appropriate domain names would be a part of a business' marketing efforts. More often than not (and for obvious advantageous reasons), the selection of domain names would be based on the trade name and/or trade mark. This is justifiable given that it makes it easier for consumers to just remember the trade mark when searching for that business online.
10. *Trade marks are one of the most effective weapons against unfair competition*: In many jurisdictions today, including Singapore, deceptive and misleading practices are prohibited by the trade mark statute itself. As such, having a registered trade mark could potentially stop others in the industry from behaving unfairly.

The Fundamentals of Trade Mark Protection

A trade mark is a sign that you can use to distinguish your business' goods or services from those of other traders. Through a registered trade mark, you can protect your brand (or mark) by restricting other people from using its name or logo.

Once acquired, a trade mark can last indefinitely as long as you renew it every ten (10) years. It is not compulsory to register a trade mark in Singapore. For a mark that is not registered, you may rely on your rights under the common law action of passing off, where applicable, to protect your mark against imitation or infringement.

However, if you register a trade mark in relation to your goods and/or services, you are effectively gaining a statutory monopoly of your mark. This means that no one else can use that mark for those goods or services. A trade mark can add value to your business because it can be used to protect your market share, you can license it to third parties such as a franchisee, or you can sell it outright for a specified value. You can also use a trade mark to help you to raise equity for the development of your business.

What can be trade marked?

The following can be registered as a trade mark. However, a mark must be distinctive and capable of distinguishing your goods or services from similar ones of other traders:

- letters;
- words;
- names;
- signatures;
- labels;
- devices;
- tickets;
- shapes; and
- colours,

  or any combination of these elements.

The following are some common examples of marks that cannot be registered as a trade mark:

- Marks that are descriptive (e.g. super, best, cheap, one dozen);
- Marks that are common to your trade (ones that have become well accepted in relation to your trade and do not distinguish the goods or service you are providing);
- Marks that are identical to earlier marks;
- Deceptive marks (ones that could misrepresent the nature, quality or geographical origin of the goods or services);
- Marks that could cause confusion (similar or identical to an earlier mark and in relation to similar or identical goods or services provided by the owners of the earlier mark); and



"Class, this is your new classmate, Maxaiden®. His father is a trademark attorney, and he insists that when you call his name, you pronounce it with the registered trademark superscript."

- Marks that are identical or similar to marks that are considered as well-known (although the list of well-known marks indicates that this is very elite category).

Trade mark classification

To register a trade mark, you will need to specify the goods and services the mark will be used for. Singapore uses the international classification of goods and services, under the Nice Agreement, to classify trade mark registrations. This classification sets out 34 different classes of goods and 11 classes of services that a trader can register in relation to a mark. If you are interested in seeing the official list, please visit the World Intellectual Property Organisation ("WIPO") website at http://www.wipo.int/classifications/nice/en/ or visit the IPOS website at https://www.ipos.gov.sg/docs/default-source/resources-library/trade-marks/resources/classification-of-goods-and-services.pdf.

Trade mark symbols

If you successfully register a trade mark, you can use the ® symbol next to your mark. Another common symbol associated with trade mark is ™. This means that the mark is being used by the company as their trade mark, but it does not mean that the mark is registered or protected under the trade mark law.

Other marks

There are a number of other types of marks that you might find are appropriate for your business:

1. *Certification marks*

   This mark is granted to people who wish to certify the characteristics of a particular goods or service. The certification can relate to the origin, material or mode of manufacture of the goods, or the performance, quality or accuracy of a service. By applying for a certification mark, goods and services are easily distinguishable from other non-certified goods or services on the market. For example, if your product is organic, you may be in a position to use a certified organic mark on your packaging.

2. *Collective marks*

   This is a sign that is used to distinguish the goods and services offered by an association or group of traders from those being offered by non-members of the association. Once registered, all members of the group can use the collective mark; it is an effective way to indicate that your business is a member of a wider group of traders.

Can You Use Your Trade Mark Overseas?

It must be borne in mind that trade mark rights are jurisdictional. This means that one would have to file in each and every country that one would like the trade mark to be registered in. Therefore, an applicant would either take steps to file the trade mark in each and every country he is interested in separately (this is what we would call national filings), or if the international registration system which is called the Madrid Protocol system is available to the applicant in his case, then the applicant may use this unitary filing system accordingly.

For applicants that wish to utilise the Madrid Protocol system and are domiciled and/or resident in Singapore, it is mandatory to have first filed a trade mark in Singapore first. This is discussed in further detail in the section "International Registration System via Madrid Protocol" below.

How Do You Register a Trademark in Singapore?

The trade mark regime in Singapore is administered by the Trade Marks Registry at the IPOS. IPOS maintains a register of all registered trade marks in Singapore.

Should the applicant wish to file the trade mark in Singapore first, the applicant has to first select a registrable mark to represent his

goods or services. This mark may be any sign or symbol but must be capable of accurate reproduction in the application form made to the Trade Marks Registry.

There is no requirement that the mark applied for must already be in use by the applicant in Singapore. There is also no requirement that the application is made personally or that the applicant is in Singapore when the application is filed. Typically, a trade mark agent would be appointed to complete the forms and file the application on the applicant's behalf. In this case, the trade mark agent's address is often provided in the application form as the correspondence address for the applicant.

Once the trade mark has been filed by lodging the form and paying the appropriate fees, the trade mark application would be reviewed by the trade marks examiner to ensure that the application meets the formality requirements, and subsequently, the application would have to be examined by the trade marks examiner to make sure there are no identical and/or similar trade marks already existing on the trade marks register, and that the items claimed are in conformity with the acceptable list of items under the Trade Marks Registry. The trade mark will then be published in the Trade Marks Journal.

In Singapore, the publication period is for two (2) months from the date of the publication in the Trade Marks Journal. The Trade Marks Journal is viewable and accessible by the public for one (1) main reason: for any third party interested in opposing the registration of the trade mark to take the necessary action within the stipulated timeframe. A third party will oppose if they believe that the mark being published should not be approved (e.g. they believe the mark is too similar to their own mark). Generally, an opposition should be made within these two (2) months, but one extension of time of two (2) months may be granted.

Once the trade mark is registered, the applicant is recognised as the proprietor of the mark, and his rights could technically last infinitely, so long as the relevant renewal dues are paid on time every ten (10) years from the actual date of registration.

Filing Colour Marks

Applicants do choose to file their trade marks in colour as opposed to just in black and white or greyscale for various reasons. Sometimes, it



The litigants in the landmark case of ***Famous Siglap Laksa v. Real Famous Siglap Laksa and Actually the Real Famous Siglap Laksa***

would be advisable to file the mark in colour, should the mark appear to be not so distinctive. By filing the mark in colour, there could be a higher chance that the trade mark would not be rejected by the trade marks examiner. Further, if colour is an important feature of the mark in question, it would make more sense in filing it in colour as marks are generally given protection the way they are registered.

In Singapore, currently there are no extra charges for filing trade marks in colour as opposed to filing them in black and white or greyscale. As such, applicants should consider filing marks in colour for the above reasons if their situation calls for it. The other option, would be filing a series mark application, which is further elaborated on in the next section.

Filing Series Mark Applications

Fortunately, in Singapore (and currently in a number of other countries including the United Kingdom), series mark applications are available. What this means is that an applicant can file for the same mark by

submitting both representations in black and white/greyscale, and in colour, in the same application. An illustration of the same can be seen in Table 8.

Table 8. Illustration of a series mark in colour

JOYOUS SHOES **JOYOUS SHOES**	In this case, although the second mark is limited to the colour red, the colour adds little to the material particulars of the textual elements. Colour is viewed as a subordinate feature in the second mark and considered as non-distinctive. Its presence does not substantially affect the visual and phonetic identity of the marks.

A series mark application is also available for an applicant that wishes to claim rights in a series of variation of the same mark, as shown in Table 9.

Table 9. Illustration of variations of a series mark

Sleeping Baby Sleeping Baby **Sleeping Baby**	The different fonts depicted are conventional scripts that are not stylised in a fanciful manner. They are considered non-distinctive and, when used in the marks, do not add material particulars to the marks.
COPIER CAT **COPIER CAT**	Increasing the prominence of one (1) or more elements of the mark over others, where it does not affect the meaning or conceptual identity of the mark, would be acceptable as a series. In the example, although the enlarged font size is more prominent in the second mark, there is no difference in the material particulars and hence both marks are acceptable as a series.

However, while this might sound like the perfect solution (especially if an applicant does not know whether to file the mark in colour or otherwise), the series mark option is not available in every jurisdiction. It is also not available under the international registration system called the "Madrid Protocol", which we will be discussing in the next section.

International Trade Mark Registration via Madrid Protocol

Stage 1 – Application through your national or regional intellectual property office (Office of origin)

Under the Madrid Protocol, an applicant needs to have already registered, or have filed an application in the applicant's "home" intellectual property office. This "home" intellectual property office for persons who are domiciled and/or resident in Singapore would be IPOS. The registration or application is known as the "basic mark".

The applicant or through his or her trade mark agents, would need to submit the international application through this same IP Office, which will certify and forward it to the WIPO.

In the international application itself, the applicant must indicate the jurisdictions that he or she wishes to have his or her mark protected. While many countries have ascended to the Madrid Protocol, there are still a number which are not. For the complete list of countries that are part of the Madrid Protocol, you may refer to the WIPO website here: http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=8.

Stage 2 – Formal examination by WIPO

WIPO only conducts a formal examination of the international application. Once approved, the trade mark is recorded in the International Register and published in the WIPO Gazette of International Marks. WIPO will then send to the applicant (or via his or her trade mark agents) a certificate of the international registration and notify the intellectual property offices in all the jurisdictions that the applicant wishes to have his or her mark protected that he or she has already designated at the point of filing (under Stage 1).

Stage 3 – Substantive examination by national or regional intellectual property offices (Office of the designated contracting party)

The intellectual property offices of the jurisdictions where the applicant wishes to protect his or her mark is supposed to make a decision within the applicable time limit (12 or 18 months) in accordance with their respective legislation. WIPO will record the decisions of the intellectual property offices in the International Register and notify the applicant (via his or her trade mark agent, if applicable) accordingly.

If there are any objections that can be addressed before the application is refused in its entirety, the applicant would be given the opportunity to make the necessary amendments and/or declarations with respect to the application. Once all these objections are resolved, the application typically goes through a publication stage in the respective countries, and should no oppositions (by a third party) be filed by the end of the publication period, the application would usually be granted registration, and a statement of grant is issued accordingly.

Why are Your Trade Mark Applications Rejected?

Applicants who register their trade marks do not normally expect that their trade marks will be unregistrable. It is therefore wise to conduct relevant trade mark searches first, before filing. Or at the very least, to seek advice from a good trade mark agent that generally understands the trade mark laws of the relevant countries that the applicant is interested in. Why?

It bears reiterating that trade marks must be registered in each and every country that the applicant wishes to seek protection in. As such, given that trade mark laws in each country varies from the other, it is unlikely that every application will be a straightforward and smooth application.

There are therefore a number of reasons why trade marks do not get registered at the end of the day.

There is already a "similar" mark registered in that country

It would not be presumptuous for one to assume that an applicant will not register in every single country in the world (unless of course the business is big and funding is not a concern). As such, there could be a similar or identical cited mark in one country, but not another. In other words, in some countries, the trade mark application can proceed to registration without the trade mark examiner citing a similar or identical mark (already existing on the national Trade Mark Register) and preventing the trade mark application from proceeding further, but not in others.

More importantly, since national trade mark practices are different, the concept of "similar" marks is actually rather subjective. This means that the trade mark examiner in Japan or China might think that the trade mark that is being considered is similar to a mark that is already registered, but the trade mark examiner in Singapore might not share the same view.

The "trade mark" does not qualify as a registrable trade mark in that country

Once again, as trade mark laws and practices vary in one country from another, a trade mark might not be registrable in one country, but can be in another.

To illustrate, see Table 10 for brief notes regarding trade mark registration in several countries in South East Asia:

Table 10. Trade mark registration in South East Asia

The Philippines	Colour, or combination of colours alone, cannot be registered, unless defined by a given form. Three (3)-dimensional marks and collective marks can be registered. Certification marks, associated marks or series of marks are not applicable in the Philippines. The Philippines Intellectual Property Code enumerates certain marks that cannot be registered.
Malaysia	A trade mark may be a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination of these. Shapes and colours per se are considered to be marks as well. Colours must be identified using the Pantone Color Code. Marks registered in black and white or grayscale are construed broadly to protect the mark both as registered and in other color combinations. In Malaysia neither sounds nor scents can be registered as a trade mark (lack of visibility). Furthermore, certain trade marks are prohibited from being registered for a number of reasons.
Myanmar	There is still no particular statute or law on trade marks or specific provisions regarding registration of trade marks in Myanmar today. However, the Penal Code defines a trade mark as "a mark used for denoting that goods are the manufactured merchandise of a particular person". Likewise, the Private Industrial Enterprise Law (Law No. 22/1990) provides that "a business is not allowed to distribute or sell his goods without trade mark". A company may acquire a right of property in a mark in Myanmar by using it on or in connection with the company's goods or services if it can be shown that the public understands the mark to indicate goods made by a particular manufacturer or sold by a particular company/merchant. The practice is therefore for the person purporting to be the trade mark owner to make a declaration of ownership with respect to that trade mark and register that declaration with the office of the Registrar of Deeds and Assurances in Yangon or Mandalay under the Registration Act. Once the declaration is registered, it is customary and advisable to publish a cautionary notice in the English language daily newspaper warning people not to infringe that trade mark.

Should You Use a Local Language Version of Your Trade Mark?

As the registration of a trade mark in original Roman characters does not automatically protect the trade mark against the use or registration of the same or similar trade mark written in local scripts used in particular countries, such as but not limited to, Tamil, Thai, Lao, Burmese or Khmer, it is highly advisable to also register a version of your trade mark in the script used in the country of interest.

Furthermore, if there is no existing character name for your brand in a local script, it is very likely that one will be adopted by local consumers either by way of translation or by transliteration. This does not always mean that the right connotations or image that you would wish to convey will be sent across. Choosing a local script trade mark equivalent is essential, not only because of the meaning, but also the sound, tone and look of local characters chosen for a trade mark name can affect the brand's reputation. Local scripts used in certain countries have unique characteristics, and therefore, your local equivalent trade mark should be carefully developed with the help and guidance of trade mark, marketing and public relations experts, as well as native speakers and translators.

In summary, there are three (3) ways to choose a trade mark name in local scripts:

1. *Creation of a literal translation*
   A literal translation works when the trade mark has a specific meaning. The disadvantage of this method is that local characters will sound different from the original trade mark.
2. *Creation of a phonetic translation*
   A phonetic translation involves creating a local character name that sounds like your original trade mark. This method is preferable when the trade mark already has a reputation amongst local language speaking consumers.
3. *Combination of a literal and phonetic translation*
   The best translated trade marks are those that sound the same as the original ones and also make reference to a defining characteristics of the brand, or have a positive meaning in the culture of the country of interest.

How do You Enforce Your Trade Mark Rights?

In the case where a trade mark is being infringed upon, practically speaking, there are several options for enforcement: criminal prosecution, administrative action, civil litigation and customs

seizures. However, the right solution for the situation would depend on the nature of the infringement: whether it is a counterfeit sold within the country, or the counterfeit is currently at the borders because of imports and exports, or if the another person is using an infringing mark for his or her business.

Criminal raids are possible with the police or administrative departments. In many countries, police or administrative raids are the generally the fastest way to end the infringement. However, when the term 'fastest' is used here, it is used in a relative manner. In fact, response time for action in a raid itself varies between countries and can range from one (1) week to three (3) months at the earliest. The longer period could be due to bureaucratic steps such as verification of trade mark registration, the examination of suspected counterfeits and even legal opinion from the local intellectual property office. Prior to any raid action, for practical reasons, it is important to first establish whether the infringer has an association with any person of influence that can undo or disrupt the raid.

Civil litigation is more suited to addressing large scale infringements. However, very few cases are brought to Court this way, as civil litigation is seldom the preferred option when dealing with trade mark infringements. In such cases, trade mark owners usually rely on criminal raids to stop infringement, and then negotiate for a settlement and getting undertakings signed, in return for not proceeding further with the case. Civil litigation is likely to be more expensive than carrying out criminal raids. Thus, raids seem to be more effective in bringing the infringement to a quick end. Moreover, it is usually easier to secure compliance through government enforcement agencies than through the service of a Court order demanding compliance for many countries in the world.

Warning "cease and desist" letters can still be effective to some degree against infringers operating out of a permanent address where the business is retail in nature. Warning letters work best where monitoring of compliance is possible.

Another option is border control, as infringing and counterfeit imports and exports are being detained. Border control through customs detention is possible if the customs authorities in question have adequate recording systems. These systems allow trade mark owners to record with customs their trade marks so that customs will

be on the lookout for possible infringements. The trade mark owner or his or her attorney will be contacted to examine the detained goods to confirm whether these are counterfeits for permanent seizure.

The above are generally the mechanisms that a trade mark owner can consider to enforce his or her trade mark rights. However, there are some pre-emptive solutions as well, which include monitoring the registration of trade mark applications. In this regard, when a trade mark is published, generally third parties can oppose the registration of that mark. As such, a trade mark owner can keep watch of published marks and file oppositions to stop such marks from proceeding to registrations as well.

Enforcement is therefore a multi-layered topic, with manifold aspects to the same concern of prohibiting someone else who is not entitled to use your trade mark for their own purposes.

The following scenario envisages just one instance where someone else is using a "similar" mark to the proprietor, and the solution in this case is certainly not to go for border control or a criminal raid.

Illustrative Example
Five (5) dancers, who met during their student days, formed a dance group and named themselves DANCERS4LYFE. They designed a logo based on the same. Over the years, they won numerous dance competitions and gained a reputation for themselves.

Recently, they found out that a new dance studio named DANCING4LYFE had been set up and was using a logo that looked very similar to theirs. They were furious, as they felt that the dance studio was trying to ride on their popularity. In addition, they were worried that their reputation would suffer if the dance studio was not up to standard.

In this scenario, there are two (2) main points that need to be addressed first:

- Firstly, did the five (5) dancers trade mark the word

mark "DANCERS4LYFE" (in plain words) besides the logo that they had designed?
- Secondly, what are the goods and/or services that they had claimed under the trade mark(s) registered (if they are indeed registered)?

On the first issue, if the five (5) dancers had registered for the word mark "DANCERS4LYFE" as well, then it would be easier to show that this mark is similar to the mark used by the dance studio under the name "DANCING4LYFE". Whether or not the logo used by the dance studio is similar to that of the logo (i.e. a registered trade mark in this case) of the five (5) dancers, would be a question to be determined from a similar-mark inquiry test: are the two (2) marks visually, aurally and conceptually similar?

Nevertheless, since trade mark rights are with respect to the goods or services claimed, whether the goods or services that the mark "DANCING4LYFE" is used for are considered similar or identical to the mark "DANCERS4LYFE", would depend on the goods or services itself.

To illustrate, assuming the five (5) dancers had claimed any (or all) of the following items under Class 41:
- Dance choreography;
- Dance events;
- Dance hall services;
- Dance instruction;
- Instruction in dancing;
- Organisation and conducting of dance, music and other entertainment festivals;
- Organising of dancing competitions;
- Organising of dancing events;
- Providing dance halls; and
- Providing dancing facilities.

The next enquiry would be whether the dance studio is using the mark "DANCING4LYFE" for similar services as what has been registered for "DANCERS4LYFE". In this scenario, they would probably have a good chance of satisfying Section 27(2)

of the Trade Marks Act (Cap. 332, 2005 Rev. Ed. Sing.) and establishing a claim of infringement on this basis.

Section 27(2) of the Trade Marks Act provides as follows:

> *"(2) A person infringes a registered trade mark if, without the consent of the proprietor of the trade mark, he uses in the course of trade a sign where because —*
> *(a) the sign is identical with the trade mark and is used in relation to goods or services similar to those for which the trade mark is registered; or*
> *(b) the sign is similar to the trade mark and is used in relation to goods or services identical with or similar to those for which the trade mark is registered,*
>
> there exists a likelihood of confusion on the part of the public."

If infringement cannot be found, then it might still be possible to take action under a claim of the tort of passing off. This way, even if trade marks are not registered, so long as the five (5) dancers can show that they have goodwill in their business, there has been a misrepresentation on the part of the dance studio, and that damage has resulted to their goodwill from the misrepresentation, then, there could still be passing off.

FAQs

Does a trade mark need to be registered?

It is not mandatory to register a trade mark. However, registering a trade mark does offer statutory protection. As such, it would be recommended to register a trade mark, and to do so early.

Why should I register a trade mark?

Registration of a trade mark affords the owner, a statutory monopoly over the trade mark. While an unregistered trade mark could still be protected under the common law tort of passing off, registration of a trade mark is evidence of ownership, and ownership rights are tagged to the date of filing itself. As a matter of proof, it might go a long

way in establishing ownership and the corresponding rights to use the trade mark, at the exclusion of others.

What is goodwill?

Goodwill, in legal parlance, has been defined by the Singapore Court as "the attractive force that brings in custom". This means the "goodwill" that is attached to the business is derived from the trade mark used with respect to that business, such that the public would associate that trade mark with the business. This legal concept goes beyond the layman's concept of "reputation", although it could very well implicitly encompass reputation.

Is my Singapore registered trade mark effective outside of Singapore?

No. As trade mark rights are jurisdictional, trade marks must be registered in each and every country that one would like trade mark rights in.

What cannot act as a trade mark?

Several signs or indicia cannot be registered as a trade mark. However, it would all depend on the respective national laws for the exact list of exclusions. Nevertheless and generally, signs that are against public morality would not be allowed to be registered. In terms of whether a sign can be a registrable trade mark, this also depends on the respective national laws, although generally descriptive marks and marks that are commonly used in the industry would not be registrable.

Other Forms of Intellectual Property

As trade marks, copyright and trade secrets have already been explained in detail in earlier parts of this book, please see below for a short summary on patents and registered designs.

What is a patent?

A patent is an exclusive right granted to an owner of an invention to use and exploit its invention.

Registering your invention with IPOS gives you an exclusive right under the Patents Act (Cap 221, 2005 Rev. Ed. Sing.) to use the invention, and prevents others from making, selling and using your invention.

You should consider the following issues before applying for a patent:

- Is my invention patentable? Your invention must satisfy three (3) criteria: (i) it must be new and never before publicly disclosed; (ii) it must contain an improvement over existing technology and cannot be obvious to someone who is skilled in that field of technology; and (iii) it should be useful and have some form of practical application in the industry.
- Do I own the invention? The rule of thumb is that an invention belongs to the inventor unless the inventor developed it in the course of work, in which case, it would belong to the employer.
- How do I prepare a patent application? The patent application and accompanying patent specification(s) need to fulfil certain legal and technical criteria. You may wish to engage a lawyer or a registered patent agent to assist you with your patent application.

Once granted, a patent is valid for 20 years from the date of filing, subject to payment of an annual renewal fee.

What is a registered design?

The Registered Designs Act (Cap. 266, 2005 Rev, Ed. Sing.) allows a designer to register and protect the external look or appearance of a product (e.g. its shape, configuration or pattern) which the designer intends to manufacture. Some examples of product designs which have been registered under the Registered Designs Act are those for furniture, bags and cameras.

Registering a product design with IPOS gives you an exclusive right under the Registered Designs Act to the overall look of the whole or part of your product design. The right enables you to stop others from making and dealing with products incorporating the registered design without your permission.

You should consider the following issues before applying to register a product design:

- Does my product design satisfy registration criteria? Your product design must satisfy two (2) criteria: (i) it

must be new and never before publicly disclosed; and (ii) it must be industrially applied to an article (i.e. more than 50 copies of the article have been or are intended to be produced for sale or hire).

- Do I own the product design? The rule of thumb is that a product design belongs to the designer, unless the designer created it in the course of employment (in which case, the employer owns the product design), or if the product design was commissioned (in which case, the person commissioning the design owns the product design).

Once granted, a registered design is valid for an initial period of five (5) years from the date of filing the application. Thereafter, the registration may be renewed every five (5) years for up to a maximum of 15 years, as long as the renewal fees are paid.

CHAPTER 9

LIMITS TO CREATIVE EXPRESSION

"The difference between stupidity and genius is that genius has its limits."

– Albert Einstein

Overview

Most artists would agree that the freedom to express one's thoughts, views, feelings, and emotions is sacrosanct to the practice and philosophy of art. In fact, artists have been referred to as "symbolic deviants in our society"[14] to the extent that the meaning and messages behind their works have the potential to transgress the status quo, challenge societal norms, and evoke controversy.



"I hope you realise that you're limiting my creative expression."

14. Dublin, S. *Arresting Images: Impolitic Art And Uncivil Unions*. 1st ed. London and New York: Routledge, 1992. Print.

Take for instance, the following examples. A playwright, who holds strong political views, may embed his beliefs and opinions into a script, and eventually into a full-fledged theatre performance. A photographer may plan a public exhibition showcasing nude photographs that she believes are artistic expressions of the human form. An investigative journalist who runs his own independent alternative news site may run a story exposing what he thinks could be an online marketing scam.

While each of these works may represent a particular facet of our society that should arguably be open to critique, appreciation, and realisation, it is not difficult to see how these very same works may offend certain segments of the community. When does political speech become a threat to society's cohesiveness? Under what circumstances does nudity transcend the line between art and obscenity? Would the allegations made in the course of uncovering a social phenomenon be deemed malicious or defamatory?

Throughout history, the terms that have been used to curtail the publication or dissemination of artistic expression have been diverse: "blasphemous", "sacrilegious", "obscene", "heretical", "seditious", "immoral" and "racist" are just a few of such terms. Extensive as these themes may be, what remains clear is that there is an ongoing tension between the freedom of expression valued by artists and the moral, societal and legal sentiments held by the general public at any one point in time. This tension is arguably more pronounced in Singapore, where racial, religious and political stability are regarded as keystone values that preserve our country's unity and progress.

This chapter explores some of the limits to free speech and expression under Singapore's laws and public policy. After reading this chapter, you should be able to identify some of the out-of-bound markers that temper artistic expression in Singapore. You should also be able to understand how to conduct your work and pursuits in a way that minimises legal risks and breaches.

Freedom of Speech Exists in Singapore, but is Limited

Citizens of Singapore enjoy freedom of speech and expression under Article 14 of the Constitution of the Republic of Singapore (1965 Original Enactment Sing.). However, it is important to note that this freedom is not unfettered. Article 14 gives our lawmakers the power to enact laws that restrict or limit freedom of speech in situations where the speech or expression in question may threaten the security of

Singapore, compromise public peace and safety, or offend the public morality. The government regards such restrictions on freedom of speech as being necessary to balance the rights of the speaker against the rights and interests of society at large.

Parliament has enacted a number of notable laws to strike this balance. For example, the Broadcasting Act (Cap. 28, 2012 Rev. Ed. Sing.) and the Newspaper and Printing Presses Act (Cap. 206, 2002 Rev. Ed. Sing.) make it compulsory for print and online publications, in particular, those that discuss political or religious issues related to Singapore, to be registered with the Info-communications Media Development Authority ("IMDA"). The Films Act (Cap. 107, 1998 Rev. Ed. Sing.) and the Undesirable Publications Act (Cap. 338, 1998 Rev. Ed. Sing.) are examples of legislation that prevent the circulation of obscene or objectionable material that the general public may take offence to. Under the Public Entertainments Act (Cap. 257, 2001 Rev. Ed. Sing.), any performance staged in public first requires an approved licence. The Sedition Act imposes stiff penalties for any form of speech or communication capable of causing ill-will and hostility among the people of Singapore. On a more personal level, defamation and anti-harassment laws act as checks against speech which carries false, irresponsible or abusive elements.

We will discuss some of these laws in greater detail within this chapter. The overarching point that every artist must know is this: while citizens of Singapore enjoy a constitutional right to freedom of speech, this freedom can be curtailed by laws and regulations if there is a need to protect public interests, safety, and security from the possible negative repercussions of free speech.

Seditious Expression: Treading Cautiously on Issues of Politics, Race, and Religion

Under the laws of Singapore, sedition is defined as any act, speech or publication that has the tendency to cause discontent, ill-will, hostility, or disaffection among the citizens of Singapore. Conduct, words or publications that may cause hatred or contempt against the government may also count as sedition.

It is crucial to note that the meaning of sedition, as given by the Sedition Act, is very broad. Speech or conduct that is racist or religiously offensive in nature will qualify as being seditious. So will negative speech or conduct that is targeted specifically at a particular class of persons

in Singapore (be it on the basis of race, religion, ethnicity or nationality etc.). Any form of expression or action capable of severely diminishing the standing of the government may also be regarded as seditious.

Sedition is a criminal offence punishable by imprisonment and/or fines. It is not difficult to bring to mind examples of individuals who have been charged and convicted for sedition, given the high-profile nature of such prosecutions. In 2015, a Filipino nurse working in Singapore wrote a Facebook post demeaning Singaporeans, wishing for Singaporeans to die, and calling for disaster to strike Singapore. He was eventually convicted under the Sedition Act and sentenced to imprisonment. In 2016, the husband-and-wife duo behind sociopolitical website – The Real Singapore – was charged and convicted for running articles that targeted foreigners from the Philippines, India, and China. Earlier in 2013, cartoonist Leslie Chew was arrested for alleged sedition over posting a satirical comic that appeared to accuse the government of being racist against Malays. The sedition charges against him were eventually dropped, but not before a palpable media uproar arose over the arrest and the investigation process.

Singapore's strict sedition laws have implications for the artistic community, whose works may, from time to time, deal with sensitive topics such as politics, race, religion and the social identities present in our country's diverse community. Should artists therefore steer completely clear of these thorny topics? Likely not, for doing so would stifle the public debate and the social symbolism upon which many artistic forms are built.

Rather, the artistic community should embark on such discussions or expressions with an added dose of caution and sensitivity. Think about the following scenario.

A playwright intends to stage a comedic production with jokes about the quirks and individualities of the various races in Singapore. Some of these jokes deal with how Chinese parents are extremely "kiasu" when it comes to their children's education, how Indians enjoy cooking curry, and how Malay weddings can liven up an entire void deck. These themes are established stereotypes, relatively gentle in nature, and may well be acceptable.

What the playwright must avoid, however, are themes and punchlines denigrating, demeaning or insulting a particular race or

religion. For example, it would be prudent to avoid depicting a certain religious practice as unwarranted, or as being a social menace. Likewise, steering clear of painting a particular race as being superior or inferior to another would probably be a wise choice. It is not difficult to appreciate how these themes may be interpreted as being divisive and intolerant, which may in turn invite public outcry and the risk of being regarded as seditious.

More often than not, originators of artistic content are so strongly rooted in their beliefs or opinions that they fail to appreciate how the messages inherent in their works may be interpreted negatively. Given the seriousness of seditious offences, artists who deal with sensitive sociopolitical issues would benefit from running their works through objective third parties. If the work is to be staged or exhibited to a large audience, it might help to first consult a legal professional familiar with sedition laws.

Defamation: When Artistic Expression Hits a Raw Nerve

While sedition laws deal with content that may be damaging to society and the public interest as a whole, defamation laws enable an individual, group, or organisation to seek redress against offensive or untrue content targeted at them.

Defamation claims often arise out of statements (text, words, writings, captions etc.) that are published or circulated. A statement is defamatory if all three (3) of the following requirements are met:

1. The statement is published to at least one (1) third party other than the originator of the statement and the aggrieved party.
2. The statement refers to the aggrieved party.
3. The statement causes "right-thinking" members of society to regard the aggrieved party in a "lower light", or exposes the aggrieved party to hatred, contempt or ridicule.

To succeed in a defamation lawsuit, the aggrieved party (known as a plaintiff) must prove to the Court that the above three (3) conditions are met.

The first requirement of publication is usually not difficult to prove. As long as the statement in question has been shown to, and read by, at least one (1) third party, the requirement is satisfied. In cases of online defamation, however, it is not enough to show that a statement was posted online. In such an instance, the plaintiff must prove to the Court that the statement had been accessed and read by a third party (or parties).



"On behalf of your mother, I am serving on you this injunction for defamation."

As far as the second requirement is concerned, a statement need not explicitly identify the aggrieved party by name for it to be deemed as having referred to the aggrieved party. If a third party reading the statement can reasonably understand the statement to be referring to the aggrieved party through some special knowledge or context that the third party has, the second requirement of reference is met.

To determine if the third requirement is satisfied, the Court will first discern the natural and ordinary meaning of the statement from the viewpoint of an ordinary and reasonable person. The hypothetical "person" must not be overly suspicious, nor should he or she be avid for scandal. If the meaning of the statement, as discerned by the Court, can cause the plaintiff's status to be tarnished, the statement can be considered defamatory. A statement may also be defamatory by way of an innuendo. This refers to situations in which a statement, although appearing to be harmless, may well be understood to be disparaging of the plaintiff by third parties who have knowledge of special facts

(usually relating to the plaintiff), which may not be not known to the general public.

An artist can find himself or herself on either end of a defamation lawsuit. He or she may take the role of a plaintiff when suing, say, a reviewer or reviewing publication who publishes unnecessarily demeaning comments on his or her work. He or she may also find himself or herself named as a defendant if his or her work carries content and statements that disparage someone else.

More often than not, and where defamation is concerned, members of the artistic community find themselves at the receiving end of a lawsuit. This risk may be heightened for artists whose work convey deeper meanings or messages directed at particular persons or organisations. Where the subject of these artistic messages find themselves aggrieved by a statement they perceive to be untrue, insulting, or disparaging, they may commence legal action against the artist for defamation.

Consider a situation in which a famous businessman makes the news for apparently condoning child labour.

A graphic artist, who feels strongly against this, produces a series of artwork caricaturing the businessman in various controversial settings (for e.g. giving the thumbs-up sign at a child sweatshop, exchanging wads of cash in exchange for child labourers at a marketplace, "herding" a line of sad-looking children towards a production line with a whip in hand). The businessman is not named, but the caricatures greatly resemble him. The caricatures are further accompanied by captions that make allegations against the unnamed subject. The artist posts these works on his Facebook account. The album garners more than 10,000 "likes" from general viewers. Some of these viewers leave comments expressly identifying the businessman by name and casting further aspersions on his allegedly unethical corporate practices.

Will the businessman succeed if he decides to sue the artist for defamation? In this case, the first requirement of publication is undoubtedly met. The published works received numerous "likes" and comments, all of which show that a sizeable number of third parties have seen the caricatures and captions.

The second requirement of reference is likely also to be satisfied. Granted, the artist made no direct mention of the businessman by name,

but given the profile of the businessman and the likeness of the caricatures, it would be difficult to argue that the businessman could not have been identified from the artworks. Moreover, a handful of third-party viewers have left comments explicitly naming the businessman in question.

Are the artworks and captions defamatory of the businessman? This final requirement may or may not be met, depending on the severity and the overall tone of the artworks and captions. If the drawings and captions were clearly meant in jest or in light-hearted humour, and if right-minded third parties would understand the depictions to be exaggerations or extreme satires, the content might not be defamatory. Courts have found that statements meant to be humorous or tongue-in-cheek do not amount to defamation. However, the line between mockery and defamation is often a thin and undefined one. A Court can well decide that, given the context and the prevailing media outcry against the businessman, it would not be unreasonable for a viewer of these artworks to actually form the impression that the businessman engages in all the unethical practices depicted in the drawings. In such a case, the artworks and their accompanying captions may be deemed defamatory.

A person who is sued for defamation can raise a number of defences. The more commonly-applicable defences are as follows:

1. The defence of justification involves proving that the gist of the statements is true.
2. The defence of fair comment may apply when the statements were comments on matters of public interest, and which a fair-minded person can reasonably make based on facts or information that are known to this person. Such facts or information can be public information, or can be known only privately to the comment maker (through research, personal connections etc.). The defence of fair comment will not work if it can be proved that the defendant made the statements in question out of malice.
3. The defence of qualified privilege arises when the maker of the statement has a duty to communicate the information in question, and the recipient has a corresponding interest or duty to receive it. For example, this defence has been successfully applied in a case where Singapore Press Holdings published an article about a boy who contracted Hand, Foot and Mouth Disease ("**HFMD**") at an education centre. The centre sued Singapore Press Holdings, alleging that the article was defamatory to because it gave the impression that the centre did not take steps to protect its students from HFMD, or to warn other students and their parents of HFMD cases arising

in the centre. The Court found the article to be defamatory on its contents, but the publisher was able to avoid liability because, given the ongoing HFMD epidemic at that point in time, Singapore Press Holdings had a duty to communicate the information to the public, who had an interest in receiving the information.

4. If a defendant has innocently defamed the plaintiff despite taking reasonable care in publishing his or her works, the defendant may choose to quickly make a public apology and to inform the viewers of the statement that statement's contents are defamatory. Doing this is known as making an "offer of amends," and allows the defendant to raise this as a defence should the aggrieved party still insist on suing the defendant.

A defendant who is found liable for defamation will usually be ordered to compensate the plaintiff in monetary terms. Such compensation is for the emotional distress and loss of reputation that the plaintiff suffers. How much compensation is awarded depends on a variety of factors such as the severity of the defamation, the extent of publication, whether or not the statements were made maliciously, and whether or not the defendant took steps to minimise the damage done. If the defamatory content caused the plaintiff to sustain some sort of economic loss (for e.g. if a defamed entrepreneur suffers a decline in business), the defendant may also have to compensate the plaintiff for such monetary loss. The Court may also make an order (known as an injunction) for the defendant to stop publishing the defamatory content, and/or to take down such content.

Defamation lawsuits are complex. They involve proving a number of requirements as well as defences, and are almost always awash with emotions and unhappiness. However, they may also be easily triggered, given how easily and quickly information can be shared over the Internet and on social media.

Artists whose works make reference, be it direct or subtle, to a particular person, class of persons, organisation, or company must be aware of the risks of aggrieving such persons. It is always prudent to note that not everyone shares the same level of tolerance and magnanimity towards what an artist may regard as fair criticism, humour, or satire. From a risk-management perspective, artistic content and expression should always be tempered by an awareness of the subject, the prevailing sentiments of general public towards that subject, and the boundary between fair criticism and defamation, as well as between truth and deliberate falsehoods.

Anti-harassment Laws in Singapore

In 2014, an anti-harassment law known as the Protection from Harassment Act came into force. This piece of legislation was passed to protect people from the scourges of physical harassment, stalking, cyberbullying, and harassing conduct undertaken through electronic communication platforms. A woman faced with an ex-boyfriend who continually stalks, calls or texts her can take action against this former lover under the Protection from Harassment Act. An employee who faces sexual harassment or outward bullying at the workplace can also seek respite under the Protection from Harassment Act.

What is interesting about the Protection from Harassment Act, however, is that its applicability is not limited to grievances between two (2) individuals (such as former lovers or employee-superior relationships). The Protection from Harassment Act appears to be applicable in situations where a class of persons, or even the public at large, feels harassed by some form of content or communication.

In 2015, teen blogger Amos Yee posted materials on the Internet intending to wound the religious feelings of Christians. He also made some unpleasant remarks about Singapore's first Prime Minister – Mr Lee Kuan Yew – who had then just passed away. Following a spate of public outrage over such content, Yee was arrested and charged under the Protection from Harassment Act for making harassing communication (amongst other charges). In this case, it was not one (1) or two (2) singular persons who felt harassed, and therefore took legal action against Yee. Rather, the Public Prosecutor stepped in to charge Yee for a criminal offence on the pretext that Yee's conduct led to a significant segment of the general population feeling harassed.

Thus, the effect and purpose of the Protection from Harassment Act can be likened to those of the Sedition Act, with the difference between the two (2) being that Protection from Harassment Act targets harassing content while the Sedition Act covers content capable of dividing and stratifying society. In terms of similarities, both laws may be invoked to protect society from undesirable content.

This then begs the further question: what amounts to harassment or harassing content? The Protection from Harassment Act gives "harassment" a very broad definition. Any threatening, abusive, or insulting words or behavior that is intended or likely to cause any person harassment, alarm, or distress can be deemed to be harassing

in nature. The terms "abusive", "insulting", "alarm", and "distress" are, in turn, capable of various interpretations referring to a wide range of negative emotions. However, putting the debate over precision aside, it remains clear that the legal threshold for harassing conduct or communication is low. Going back to the case of Amos Yee, it can be argued that the charge against him could have been warranted and made out on the premise that his posts caused at least some members of the public to feel alarmed and distressed, especially in the context of an event as delicate as the passing of Singapore's founding Prime Minister.

The Protection from Harassment Act's implications for artistic expression are twofold.

First, if a certain artistic work is directed towards a particular person, and the contents of such work are seen as likely to cause this person harassment, alarm, or distress, the artist in question may face legal action from the aggrieved person. Where disputes between two (2) individuals are concerned, the Protection from Harassment Act provides avenues for a harassed person to apply to Court for a protection order restraining the harasser from further engaging in the objectionable behavior or communication. This procedure and remedy can be likened to seeking an injunction against a defendant in a defamation lawsuit. Monetary compensation can be awarded under these proceedings, but are extremely rare.

Second, if an openly published or exhibited work of art ends up offending the morality or feelings of the general public, the artist may risk facing criminal charges (such as those in Amos Yee's case) under the Protection from Harassment Act. Convictions for Protection from Harassment Act offences carry jail terms of up to six (6) months and/or fines of up to S$5,000. Repeat offenders can expect stiffer penalties.

An actor produces and stars in a short video showcasing what he thinks to be a lifestyle of debauchery and promiscuity led by gay men. The actor meant for his work to be taken as social commentary, and not as criticism towards homosexual men. The video is put up on YouTube.

A group of "lesbian, gay, bisexual, and transgender" activists watch the video and feel affronted by it. In particular, they are upset by how the video portrays the gay community in a negative light, because, according to them, not all gay men are depraved and promiscuous.

Either one or some of these "lesbian, gay, bisexual, and transgender" activists can apply to the Court for a protection order against the actor on the grounds that the video is insulting, and has caused them distress and alarm. If the Court agrees with the applicant(s), and further deems it just and fit to issue a protection order, the actor may be compelled to remove the video from publication.

Let us take this scenario one step further, and suppose that the video contains explicit threats to harm or injure gay people. In such a case, the police may be prompted by reports by aggrieved individuals to investigate the matter. The actor can subsequently be charged in Court under the Protection from Harassment Act for producing abusive and threatening content that harasses, alarms, and distresses a certain segment of society.

The precautions that an artist ought to take in relation to the Protection from Harassment Act are similar to those arising out of sedition laws. It is best to avoid openly inflammatory, profane, hateful or threatening conduct and speech. When unsure, it might be prudent to run a "sanity check" on your work by seeking the input of objective third parties or a legal professional.

Freedom of Speech Must Not Prejudice the Administration of Justice

In August 2016, Parliament enacted the Administration of Justice (Protection) Act. At the time of this chapter's writing, this piece of legislation is not yet in force, but when that happens, it will prescribe standards for what amounts to contempt of Court and the penalties that such an offence attracts.

Contempt of Court can happen in many forms. At the more straightforward level, disobeying a Court order, disrupting a Court hearing, or making baseless accusations against a judge amounts to contempt.

There is also the more textured conduct of making public comments about an ongoing Court case, which may, under the Administration of Justice (Protection) Act, amount to contempt if a Court (and the outcome of the case) risks being influenced by such comments. This is known as sub-judice contempt. While we maintain confidence in the impartiality and independence of thought exercised by our judiciary, we do not shy away from the fact that judges are but only human, and may, like all of

us, be influenced by comments, remarks, and discourse in the public domain. The Administration of Justice (Protection) Act's prohibition of sub-judice contempt serves as an added layer of protection against such undue extraneous influence.

Artists, especially those who passionately advocate a cause or belief, must be mindful of sub-judice contempt and its implications. Social media and the internet catalyses public debate on high-profile Court cases. The prosecution and conviction of City Harvest's church leaders is one striking example. The internet was awash with comments and opinions on varying aspects of the Court case, ranging from whether or not the accused persons were guilty, the morality of their conduct, how severe their sentences ought to have been, and even what they wore to Court.

It is unlikely that common banter and casual discussions will amount to sub-judice contempt, even if they take place on the internet. What artists need to be conscious about is large-scale expressions of opinion capable of generating immense public debate in their wake. There is a difference between a man on the street taking to an online forum to express his views on whether or not a high-profile Court case should result in a conviction and a widely-known artist publishing the same opinion on his Facebook page with 350,000 followers. While not spelt out explicitly in the Administration of Justice (Protection) Act, an individual's ability and position to stimulate thought leadership and public opinion is likely a difference as to whether or not an act is considered sub-judice contempt. The saying "with great power comes great responsibility" is probably an apt characterisation of this.

Needless to say, publishing articles, creating documentaries, staging plays and exhibitions, producing podcasts etc with content specific to ongoing Court cases are now endeavours that ought to be undertaken with caution. It would be unwise to interview or feature witnesses to an ongoing Court case in a piece of artistic work. It would be similarly imprudent to run a campaign (online or otherwise) openly declaring the innocence or guilt of a party to an ongoing Court case.

The Administration of Justice (Protection) Act does not prescribe a set list of conduct that is considered sub-judice contempt. Instead, it broadly stipulates that any act that has a real risk of prejudicing or interfering with an ongoing Court case amounts to contempt. It is then up to the Court hearing a contempt case to decide, based on the events and context, if a particular act counts as contempt.

The Administration of Justice (Protection) Act is a new piece of legislation. At the time of this chapter's writing, it remains unclear as to how aggressively the authorities will pursue prosecutions under the Administration of Justice (Protection) Act, or in what situations they will be more inclined to do so. Artists are therefore advised to take a more circumspect approach to producing and expressing content that relate to ongoing Court cases, especially if the case is a high-profile and publicly visible one. Such content and discourse becomes permissible (and does not amount to contempt) after the Court case (including appeals, if any) conclude finally. Bear in mind, though, that cases may take a year or more to be heard fully and finally, and even longer if appeals are filed.

Preservation of Public Peace and Property

Artists might find it tempting to equate the freedom of expression with the freedom to speak, perform, or display their works anywhere and anytime. A notion like this could not be further from the truth, especially in Singapore, where public peace and order are highly valued.

For one, expressions of art should not be carried out at the expense of public and private property. Graphic artist Samantha Lo, better known as the "Sticker Lady," made headlines in 2012, when she was arrested for pasting satirical stickers on traffic light buttons and public spaces. Lo was subsequently charged in 2013 for committing an act of mischief.

The public was largely divided into two camps in the wake of this incident. Some saw the stickers as an artistic expression of our uniquely Singaporean lifestyle, and as non-permanent alterations to the property they were affixed on (since they could be peeled off). Others thought Lo had no business defacing public property, and saw her acts as an inconsiderate spate of vandalism.

Debates of art and morality aside, this incident underscores the zero-tolerance approach the authorities take towards art that interferes with or damages property, both private and public. Those who damage, destroy or deface property not belonging to them may be charged under a number of offences.

The Vandalism Act (Cap. 341, 2014 Rev. Ed. Sing.) carries severe penalties, which include imprisonment, fines, and/or caning, for acts of vandalism. A wide array of conduct can amount to vandalism. This covers writing, drawing, painting, inscribing words, slogans, symbols or any other markings, as well as affixing or displaying papers, posters, placards,

banners or any other kind of document, on both private and public property, without first seeking permission from either the government (in the case of public property) or the property owner (in the case of private property).

Causing damage or destruction to property is also punishable under the Penal Code offence of mischief. In addition, the act of affixing any paper or making markings on any building, wall or fence qualifies as an offence of nuisance under the Miscellaneous Offences (Public Order and Nuisance) Act (Cap. 184, 1997 Rev. Ed. Sing.). Both offences carry penalties of imprisonment and/or fines.

Busking belongs to another class of artistic expression that involves public space and property. Buskers have become increasingly prevalent in Singapore over the past years. Budding singers, dancers, magicians, jugglers, painters, and acrobats are showcasing their talents and adding to the vibrancy of our public spaces.

Anyone interested to busk on the streets (involving collection of public gratuity) are required to apply for a Letter of Endorsement from the NAC under the Busking Scheme (NAC refers to this permit as a "Busking Card"). Only Singapore citizens, permanent residents, international students who have received a letter of recommendation from their respective institutions, and foreigners on a valid employment pass with consent from the MOM are eligible to apply for a Busking Card (i.e. Letter of Endorsement). In addition, applicants are required to attend an audition before an NAC panel so that the NAC can ensure the quality of the busking performances.

Busking without a Busking Card from the NAC may constitute an offence under the Public Entertainments Act. Do note that even with a Busking Card, a busker is still subject to other conditions and regulations such as the Miscellaneous Offences (Public Order and Nuisance) Act. For instance, if members of the public make a police complaint over noise generated by the performance (in performances involving loud singing, music, or percussion etc.), the busker may be investigated and charged for an offence of causing excessive noise. Examples of additional conditions include: not obstructing or causing obstruction to pedestrian or vehicular traffic; not actively soliciting any donation; and not making any vulgar or obscene gesture or remark. However, applying for a valid Busking Card may reduce the risks of such complaints occurring because the endorsed busker would only be able to busk at designated busking locations where the suitability of the sites and venue owners' agreement would have been taken into consideration.

Photographers, painters, sculptors, designers and other visual artists who intend to showcase their works in public spaces must apply for what is known as an Arts Entertainment Licence from IMDA. Visual art exhibitions are not considered a form of busking, and require separate licensing under the terms of the Public Entertainments Act. Again, carrying on an exhibition without first obtaining the required Arts Entertainment Licence is an offence under the Public Entertainments Act.

If an artist or an organisation intends to publicly exhibit a film that has been rated as NC16, M18, or R21, a Film Exhibition Licence must first be obtained from IMDA. The exhibition of films rated G, PG, and PG13 does not require licensing. This licensing requirement applies also to public screenings of film trailers, although a trailer may possibly be given a different rating from the full-length film because the trailer contains significantly less content.

The licensing framework relating to public and arts entertainment can be complex. Different types of performances and exhibitions may require different types of licences from different authorities. There are also various exemptions to the licensing scheme which may or may not be applicable to particular types of performances. Given these nuances, artists (both individuals and organisations) are encouraged to consult the relevant licensing authorities or to do ample prior research before planning any public expression of their art form, be it large or small in scale.

Regulating and Classifying Artistic Content

Content regulation is a provocative issue that sparks fervent debate amongst members of the artistic community. Proponents of regulation cite a host of reasons in support of censorship and regulation: protection of the young and impressionable, sensitivity to national interests, and respect for community values and prevailing public morals. On the other hand, artists, who expend time, effort, and talent towards their work, see censorship and regulation as a stifling of creativity and the development of the artistic scene

The artistic community in Singapore has been extremely vocal and outspoken in matters concerning regulation of artistic content. In 2014, the IMDA (the body primarily responsible for content regulation; formerly known as the Media Development Authority of Singapore) proposed a licensing scheme that would allow individual artists and art groups to self-classify their performances. This was met with vociferous opposition

from an alliance of 45 arts groups, all of whom backed a position paper detailing their objections to the proposed scheme. In essence, the arts groups expressed grave discomfort over how the scheme would effectively require artists to engage in self-censorship – a process that conflicts squarely with artistic integrity. Furthermore, artists were concerned over the potentially stiff penalties that could result from a misclassification of their works.

Faced with such strong resistance from a unified arts community, the IMDA eventually scrapped the proposed scheme. This meant that content regulation and censorship fell back, once again, into the hands of the IMDA.

Veteran artists, production houses, theatre companies, and the likes of such will likely be familiar with IMDA's content regulation standards and guidelines. Artists who are starting out on their careers, however, should consider familiarising themselves with IMDA's policies.

For example, most of us would be familiar with IMDA's film classification system, under which films can be given ratings of G, PG, PG13, NC16, M18, or R21, depending on the suitability of their content for audiences of varying ages. When classifying films, IMDA considers factors such as whether or not the film in question contains violence, sex, nudity, depictions of drug and substance abuse, horror, and the type of language used. In terms of process, film distributors first submit a film to IMDA, after which IMDA's Board of Censors assesses and classifies the content accordingly. For more controversial titles, the Board of Film Censors may consult a Films Consultative Panel (comprising members from different segments of the community) to gather more feedback before making a classification decision. The film distributor is then informed of the final rating given, and it may choose to either accept the given rating or edit the film so that it qualifies for a lower rating (and thus may reach wider audience). If a film distributor does not agree with the rating issued, it may appeal to the Films Appeal Committee, whose decision is final.

The above guidelines and process applies specifically for films and videos. IMDA maintains different regimes for other types of media. Arts entertainment, video games, the Internet, audio materials, television, publications (books and magazines), and radio each has its own sets of classification ratings, standards, considerations, and processes.

We will consider the regime for arts entertainment as a further example. Arts entertainment is a content category that encompasses plays, musicals, stand-up comedies, exhibitions (art and photography), and performances that involve music, singing, or dancing (including pop concerts). There are four (4) distinct ratings for arts entertainment:

1. General – suitable for all audiences, including young children.
2. Advisory – contains some mature content, and parental guidance is advised.
3. Advisory 16 – contains mature themes suitable for audiences 16 years and above (but no enforcement required, which means audiences below 16 may still be permitted to enter).
4. R18 – restricted to audiences 18 years and above (must be enforced by the event organiser).

When classifying arts entertainment, IMDA considers the following factors: protection of the young, national interests, community values, prevailing public sentiments, and impact on society. Process wise, artists and event organisers are required to submit substantive content reflective of the event in the form of play scripts, concert set lists, song lyrics, images, video footages etc. IMDA will then issue a rating based on such submitted content. For controversial performances, IMDA may seek the views of the Arts Consultative Panel (comprising members from various professions and community segments) before arriving at a decision. Applicants who are dissatisfied with the rating outcome may appeal against IMDA's decision to the Minister for Communications and Information, whose decision will be final.

The consequences for staging artistic showcases in public without first obtaining the requisite licences and classification ratings from the authorities may be dire, especially when the showcased content is arguably controversial in nature. In 1994, artist Josef Ng staged a performance along an open corridor of a public shopping mall, where he snipped his pubic hair in an expressionistic defiance of what was thought to be active persecution of homosexuals by the authorities. The police raided the performance space, and Ng, together with his collaborators, were arrested and prosecuted for committing an obscene act in public.

With proper licensing and approvals, however, artist Loo Zihan was able to stage a re-enactment of Josef Ng's performance in 2012. This performance was held at The Substation, and issued a classification rating of R18 because of the nudity involved. Audiences under the age of 18 were not permitted entry.

Loo's re-enactment of Ng's performance almost 18 years on highlights not only the importance of a buy-in from the authorities, but also that content regulation is a process ultimately dependent on prevailing social norms and sentiments. It is a dynamic process because, as these norms and sentiments shift over time, regulation standards and guidelines may likely follow suit. In the immediate wake of Ng's 1994 act, few would have thought that the government would ever approve another performance of a similar nature, let alone a scene-by-scene re-enactment of it. As things turned out, Loo's 2012 re-enactment was given the go-ahead, albeit with an R18 rating, signaling that public may have developed higher latitude of acceptance towards nudity and provocative topics.

It is not within the ambit of this chapter to provide an exhaustive guide to the regimes for all forms of media and content regulated by IMDA. Artists, art groups, content producers, and event organisers should appreciate, after a reading of this chapter, that content regulation and classification is a nuanced and multi-dimensional process depending on the type of artistic output generated and sought to be showcased.

It is prudent practice for an artist to familiarise himself or herself with the regime applicable to his or her own field of work. IMDA hosts a compendium of information relating to regulations and licensing on its website. It also maintains a hotline for licensing and classification matters, and artists are encouraged to tap onto these resources before releasing their works into the public domain.

Regulating and Classifying Artistic Content

Tension and conflict are themes captured in many art forms. The pursuit of art as a profession or hobby also generates tension between art in its most uninhibited form and other competing interests such as commercial demands, current trends, social values, and legal requirements.

The professional artist will likely be aware that, as much as he or she would like, art cannot be practised in a vacuum. This is very much the case when freedom of expression in art is concerned. Such freedom must be balanced against countervailing legal obligations that take exist to protect the rights and interests of society, community, key institutions, and other individuals.

A number of key limits to free speech and expression have been discussed in this chapter. Artists may find paying attention to these limits a chore and a curtailment of their artistic endeavours. Keeping within legal boundaries is a difficult balance to strike, but it is also a necessary one; falling on the wrong side of the law may spell challenges for an artistic career, be it in terms of reputation, finances, or even funding.

Staying on the right side necessitates some familiarity with the law and its consequences, which are topics this chapter has attempted to deal with. Also needed, on an artist's part, are common sense, a regard for community values, and a willingness to compromise when necessary. Above all, remember that you are not alone in navigating the somewhat tricky waters of legality. Where unsure, speak to more experienced members of the artistic community or seek advice from a legal professional. These steps will go a long way in helping Singapore's art scene thrive and develop in a viable and egalitarian manner.



"Once I understood just how many laws regulate freedom of expression in Singapore, I knew I would make a much better living as a lawyer than an artist."

CHAPTER 10

COMPETITION LAW IN SINGAPORE

"And while the law of competition may be sometimes hard for the individual, it is best for the race, because it ensures the survival of the fittest in every department."

– Andrew Carnegie

What is Competition Law?

Basically, competition law helps ensure a fair marketplace in Singapore by preventing private sector entities from acting in an unfair way, such as by colluding with competitors to set prices, share markets or rig bids, or abusing dominant market positions.

The Legislation

Singapore's generic competition legislation, the Competition Act (Cap. 50B, 2006 Rev. Ed. Sing.), was passed in October 2004 to reinforce Singapore's pro-competitive business environment and enhance the efficient functioning of markets in Singapore. The



"I'm a competitive competition lawyer."

Competition Act prohibits anti-competitive activities, such as anti-competitive agreements, abuses of dominance and mergers that would substantially lessen competition in Singapore. The Act also established the Competition Commission of Singapore ("CCS"), a statutory body under the purview of the Ministry of Trade and Industry ("MTI"), which is tasked with the administration and enforcement of the Competition Act.

The Competition Act was implemented in phases between 1 January 2005 and 1 July 2007: the substantive provisions prohibiting anti-competitive behaviours came into effect on 1 January 2006 and those regulating mergers kicked in on 1 July 2007.

The Act has two (2) main purposes, namely, to provide a generic law to ensure fair competition in Singapore markets and to establish the CCS, i.e. the statutory body in charge of administering and enforcing the substantive provisions of the Act.

Who Administers and Enforces the Competition Law?

The CCS is the body corporate established under the Competition Act on 1 January 2005 to administer and enforce the Competition Act. It falls under the purview of the MTI. The role of the CCS is to maintain and enhance efficient market conduct and promote overall productivity, innovation and competition of markets in Singapore as well as to eliminate or control practices which have an adverse effect on competition in Singapore. The CCS is also in charge of advising the Government or other public authorities on national needs and policies in respect of competition matters generally, and to act internationally as Singapore's national representative body in respect of competition matters.

Under Section 72 of the Competition Act, the Competition Appeal Board, which consists of members appointed by the Minister for Trade and Industry, has exclusive jurisdiction to hear appeals against any appealable decision or direction made by the CCS in relation to anti-competitive agreements, abuses of dominance and anti-competitive mergers. The Competition Appeal Board has the powers, rights and privileges vested in a District Court on the hearing of an action, including the enforcement of the attendance of witnesses and their examination on oath or otherwise, the compelling of the production of documents and the award of costs or expenses.



"How can there be competition law in Singapore if there is only one Competition Commission of Singapore?"

The Minister for Trade and Industry, under whose Ministry the administration of the Competition Act falls, has various powers under the Competition Act. Such powers include, but are not limited to, the power to issue block exemption orders to exclude a specific category of agreements from the application of the Section 34 prohibition or the exclusive power to exempt a merger from the Section 54 prohibition on the ground of public interest considerations.

There are a number of sectoral regulators in Singapore which enforce the sectoral competition rules that apply to persons and/or activities under their purview. These sectoral regulators include, inter alia, the Info-communications Media Development Authority, the Energy Market Authority, the Civil Aviation Authority of Singapore and the Monetary Authority of Singapore. It is important to highlight here that the fact that an undertaking is regulated by a sectoral regulator for a part of its activities does not necessarily mean that the Competition Act does not apply to it at all. It is, therefore, necessary to check whether a sectoral regulator has, as its role, the enforcement of competition in the sector under its purview and whether the sectoral regulator or the CCS has jurisdiction over the specific matter.

Who does the Competition Act apply to?

The Competition Act applies to commercial and economic activities carried on by private sector entities, regardless of whether they are owned by a foreign entity, a Singapore entity, the Government or a statutory body. Sections 34, 47 and 54 all apply to "undertakings", which is defined under Section 2 of the Competition Act to mean "any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services".

However, since the Competition Act was meant to regulate the conduct of market players, the Competition Act provides that the prohibitions contained in Sections 34, 47 and 54 of the Competition Act do not apply to any activity, agreement or conduct undertaken by the Government, a statutory body or any person acting on their behalf. Specifically, Section 33(4) of the Competition Act provides that the prohibition does not apply to any activity carried on by, any agreement entered into or any conduct on the part of the Singapore Government, any statutory body, or "any person acting on behalf of the Government or that statutory body, as the case may be, in relation to [such] activity, agreement or conduct".

In its decision on 4 June 2010 in relation to an Abuse of Dominance Position by Sistic.com Pte Ltd ("Sistic Case"), the CCS investigated, amongst others, an agreement between Sistic, a dominant ticketing agent in Singapore, and the Singapore Sports Council, a statutory body under the Competition Act. The agreement contained explicit



"My clients contend that as the 800-pound gorilla, you have clearly abused your dominant position in their market."

restrictions requiring all events held at the Singapore Indoor Stadium (a division of the Singapore Sports Council) to use Sistic as the sole ticketing service provider. Whilst, under Section 33(4) of the Competition Act, the agreement itself was excluded from the application of Section 34, the CCS decided, however, that the unilateral conduct on the part of Sistic in imposing the exclusive dealing obligations under the agreement was not, itself excluded. In other words, if an undertaking abuses its dominance through contractual clauses imposed on a statutory body, Section 47 of the Competition Act nevertheless applies to the conduct. This was upheld by the Competition Appeal Board in its decision in the Sistic Case issued on 28 May 2012.

What is an "agreement"?

An "agreement" means any contract, arrangement or understanding, between undertakings whether or not it is legally enforceable, and includes a decision by an association such as a trade association, and concerted practices, i.e. informal coordination between undertakings, with no formal agreement being entered into. This will include:

(a) written agreements;
(b) oral agreements;
(c) gentlemen's agreements; or even
(d) a quiet "understanding", for example, a wink and a nod.

An agreement may be reached by any means, including via:

(a) a meeting between the parties;
(b) an exchange of letters;
(c) an exchange of e-mails;
(d) telephone calls, or SMSes; or
(e) an action taken with an unspoken 'common understanding' in mind.

As seen from the CCS's decisions, a concerted practice exists "if parties, even if they do not enter into an agreement knowingly substitute, for the risk of competition, practical cooperation between them". Further, a decision by a trade association to fix fees, rates, commissions or the terms and conditions to be applied in the relationships between members of the associations and their customers also falls within the prohibition of anti-competitive agreements.

In addition, exchanges of sensitive commercial information between competitors can amount to an anti-competitive agreement. In practice, this means that discussions with competitors on

Illustrative Example
ABC Society and three (3) of its competitors meet at a luncheon and discuss the recent increase in fees to be paid to script-writers. They agree that this increase would result in an increase in the cost of productions of shows. A few days later, ABC Co and its competitors all increase their ticket prices. The CCS investigates and during an investigation, finds the agenda of two (2) of the societies with the indication of the date and parties to the luncheon. This can suffice for the CCS to establish that a price-fixing agreement between ABC Society and its competitors.

commercially sensitive information such as rates, fees, charges, customers, company strategy, sales volumes etc. must be avoided.

Care must be taken with respect to e-mails and voice-mails as they can often contain even more damaging statements than letters or memoranda, because they are usually sent or left casually, in the false belief that they are confidential or will be destroyed after a short time. The CCS has wide-ranging powers of investigation under the Competition Act which includes accessing both e-mail and voice-mail messages during an inspection and the CCS can thereafter use them in legal proceedings.

Both e-mails and voice-mail are regarded as a particularly good source of information because they are stored by time and date and can give a full picture of what was done and said.

The following are a list of things to be kept in mind in order to avoid complications at the time of investigation by the CCS:

(a) Take as much care in sending messages by e-mail or leaving them on voice-mail as you would when sending a letter or memorandum.
(b) Assume that all e-mail or voice-mail messages may be read or heard by others.
(c) Keep in mind that e-mail and voice-mail messages, even if deleted, leave a potentially damaging record that may have to be produced to the CCS or in legal proceedings.
(d) Exercise particular caution with messages sent to or received from outside the company over the internet.

(e) Remember that e-mail messages are often appended to other e-mail messages and may be forwarded or replied to several times.

What is Prohibited by Competition Law?

There are three (3) sections containing the main prohibitions under the Competition Act, namely Section 34 which prohibits anti-competitive agreements, Section 47 which prohibits abuse of a dominant position and Section 54 which prohibits mergers that substantially lessen competition ("**SLC**").

Prohibition of anti-competitive agreements

General position

Section 34 of the Competition Act prohibits agreements, decisions or concerted practices which have the object or effect of preventing, restricting or distorting competition within Singapore unless exempted. The application of the Section 34 prohibition is limited only to those agreements that have as their object or effect an appreciable prevention, restriction or distortion of competition in Singapore. The CCS Guidelines on the Section 34 Prohibition (cited as "Competition Commission of Singapore. *CCS Guidelines on the Section 34 Prohibition*. Singapore: Competition Commission of Singapore, 2016. Print") ("**Section 34 Guidelines**") provide, however, that some types of agreements will always be regarded as anti-competitive whether or not the appreciability thresholds above are crossed. Such agreements are those that relate to "black-listed activities", and include the following agreements:

(a) Price-fixing;
(b) Sharing of markets;
(c) Limiting or controlling production; and
(d) Bid-rigging.

In the CCS decision in *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore* (the '*Pest Control Case*'), Case No CCS 600/008/06 on 9 January 2008, for example, the CCS reinforced its view that bid-rigging, a blacklisted activity, will always appreciably restrict competition in the market. The CCS stated at paragraph 57 of its infringement decision as follows:

> *"… the Commission regards agreements or concerted practices involving price-fixing, bid-rigging, market-sharing or output limitations as always having an appreciable*

adverse effect on competition, notwithstanding that the aggregate market share of the parties falls below the 20% threshold and even if the parties to such agreements are [small and medium enterprises]. The Commission notes that this is the view adopted by competition authorities and Courts in jurisdictions such as the [United Kingdom] and [the European Community].”



“Yes, in lay terms, agreements, decisions or concerted practices which have the object or effect of preventing, restricting or distorting competition within Singapore could be called ‘pakat-pakat’.”

In the case, the parties involved were six (6) pest control operators who engaged in the fixing of prices of pest control project operations through collusive tendering or bid-rigging in the provision of termite control and treatment services using Agenda, a termiticide, for properties in Singapore. Amongst other things, the parties colluded on the prices tendered to properties, “rigging” the bids such that a designated party will win the tender.

Price fixing includes fixing the price itself or components of the price (e.g. a discount, establishing the amount or percentage by which prices are to be increased, or establishing a range outside of which prices are not allowed to move) and may take the form of an agreement to restrict price competition (e.g. an agreement to stick to price lists or not to issue a price quote without consulting potential competitors, or not to charge less than any other price in the market). Also, recommendations of trade associations in relation to price, collective price-fixing or price co-ordination of any form fall into this category, including a decision that requires trade association members to post their prices for other members to view using the association as a vehicle, as well as any recommendation on prices including discounts and allowances.

Case Study (1)
In the *EBAA* Case, Case No CCS decision 500/003/08 on 3 November 2009 – *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand*, for example, the CCS imposed financial penalties on 16 express bus companies and the Express Bus Agencies Association for entering into agreements to fix minimum prices as well as a component of the price of their products. In the case, according to the CCS, the coach operators, together with the Express Bus Agencies Association, had agreed to fix the prices of coach tickets for travelling between Singapore and destinations in Malaysia and Southern Thailand from 2006 to 2008. Through meetings arranged regularly under the auspices of the Express Bus Agencies Association, the coach operators agreed to fix the coach prices in two (2) ways: by establishing minimum selling prices of coach tickets sold and by agreeing on the amount of a fuel & insurance charge that was eventually charged to travellers.

Case Study (2)
On 30 September 2011 in its decision on *Price fixing of monthly salaries of new Indonesian Foreign Domestic Workers by Employment Agencies, Case No CCS decision 500/001/11* on 30 September 2011, the CCS fined 16

employment agencies S$152,563 for collectively fixing the monthly salaries of new Indonesian maids. The agreement resulted from one meeting at a club that led to a pay increase for new Indonesian maids, from S$380 to S$450 a month.

Importantly, the CCS states in its decision that "the mere participation by an undertaking in a meeting with an anti-competitive purpose, without expressing manifest opposition to or publicly distancing itself from, the same is tantamount to a tacit approval of that unlawful initiative. CCS further notes that disclosure of intention or conduct of the market serves to eliminate or reduce uncertainty associated with competition and is sufficient to prove that there has been a concerted practice". On what amounts to "publicly distancing itself", the CCS takes the view that "an undertaking's disagreement with what was proposed at the meeting is not sufficient to amount to public distancing".

- **A one-way exchange of information is sufficient to establish that there has been a reduction in uncertainty as to future plans, and could lead to a violation.**

Before you exchange information with a competitor, ask this question: WHY AM I SHARING THIS INFORMATION?

Case Study (3)

On 18 July 2012, in its decision on Infringement of the Section 34 Prohibition in relation to the price of ferry tickets between Singapore and Batam, Case No CCS decision 500/006/09, the CCS fined Batam Fast Ferry Pte Ltd and Penguin Ferry Services Pte Ltd, which both provide passenger ferry services on routes between Singapore and Batam, Indonesia, S$172,906 and S$113,860 respectively. The investigation was launched further to a complaint by a member of the public

that the ticket prices offered by the two (2) ferry operators were generally identical. The CCS found that the two (2) ferry operators had exchanged sensitive price information of ferry tickets sold to corporate clients and travel agents. This occurred through one party "blind copying" the other party in e-mails providing ticket price information to clients or through checks, where one party verified the prices of ferry tickets with the other before getting back to its clients' request for price quotations. On the facts, the CCS found that the exchange of information, albeit unilateral, amounted to a concerted practice (if not an agreement) and stated that:

> *"The section 34 Prohibition also applies to concerted practices. There is a concerted practice if parties, even if they do not enter into an agreement, knowingly substitute the risks of competition with practical cooperation between them. It is CCS' view that the Parties entered into a concerted practice in this case."*

The CCS further found that this concerted practice had the object of restricting competition as it was a price-fixing agreement in violation of Section 34 of the Competition Act. In reaching this conclusion, the CCS referred to the EU Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. The EU Commission Guidelines state that:

> *"Information exchanges between competitors of individualised data regarding intended future prices or quantities should therefore be considered a restriction of competition by object. In addition, private exchanges between competitors of their individualised intentions regarding future prices or quantities would normally be considered and fined as cartels because they generally have the object of fixing prices or quantities. [...]" (Emphasis added by the CCS).*

As the case gives a stern warning to businesses in Singapore that they must not exchange sensitive and

confidential business information, including price information, which are not published or readily observable to competitors in the usual course of business with their competitors, the CCS took the opportunity of the case to emphasise that:

> *"If businesses are approached to engage in such anti-competitive behaviour, they should distance themselves by explicitly rejecting such overtures and reporting the matter to CCS immediately".*

Other types of potentially anti-competitive agreements under the Competition Act include applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage (i.e. "discrimination"), and making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts (i.e. "tying" or "bundling"). So far, the CCS has not issued any infringement decision involving discrimination or tying/bundling.

Over the last ten (10) years, the CCS has drastically stepped-up enforcement against cartels. The introduction of a revamped leniency program in 2009 (which included the introduction of a marker system and a leniency+ system) opened the door to more international cartels being investigated, and issued revised guidelines from 1 December 2016 (more information on the leniency program can be found in a later section of this chapter). Competition law needs to be taken very strictly.

Before you exchange information with a competitor, ask this question:
WHY DO I NEED TO SHARE THIS INFORMATION?

If the answer is:
To help the organisation to gauge its competitiveness, to see what is best to pay freelancers, to decide on your terms and conditions or 'just for information' then:
DO NOT PROVIDE OR ASK FOR THE INFORMATION.

Application to trade associations or other informal groupings

Any decision by a trade association to fix minimum prices, maximum rates and/or target price are prohibited.

In addition, exchanges of information between competitors which lead to any of the activities described above will also amount to anti-competitive agreements. In practice, this means that discussions with competitors on commercially sensitive information must be avoided.

As a rule, an undertaking must follow the rules set out in Table 11 prior to or when attending a trade association's meeting, conference, annual dinners or any gathering of any form, be it at the trade association's premise or any particular venue held by the trade association.

What is the prohibition on abuse of dominance?

Section 47 of the Competition Act states that "any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore is prohibited". The Act does not prohibit dominance by itself; it is only the abuse of a dominant position which is prohibited. This is an important point as there are competition laws in the region which prevent undertakings from being dominant or from acquiring dominance even through mere organic growth. This is not the case in Singapore.

For the Section 47 prohibition to apply, it is thus necessary to establish that:

(1) the undertaking concerned is in a dominant position (either in Singapore or elsewhere), and
(2) the dominant undertaking abused this dominance.

There is no definition as to what constitutes a dominant position in the Competition Act. The Guidelines issued by the CCS on the Section 47 prohibition (cited as "Competition Commission of Singapore. CCS Guidelines on the Section 47 Prohibition. Singapore: Competition Commission of Singapore, 2016. Print"), read together with the CCS Guidelines on market definition (cited as "Competition Commission of Singapore. CCS Guidelines on Market Definition. Singapore: Competition Commission of Singapore, 2016. Print") provide guidance, however, on how the CCS will establish dominance.

Table 11. DOs and DONTs before attending any trade association gathering

DOs	DON'Ts
1. DO ensure that the agenda of the trade association's meetings does not raise competition law concerns. 2. DO ensure that official minutes of the meeting are taken. 3. DO take detailed notes of any trade association meeting you attend to, including the names of the participants and file them away in an organised fashion. 4. If, during a trade association meeting, discussions take place on prices, commissions, charges or any other commercial terms and conditions to be followed by you as a member, DO IMMEDIATELY object to the discussion taking place, and ensure that your objections are recorded in the minutes of meeting and leave the meeting. 5. DO ensure that any people from your company attending the meeting are aware of these basic rules. 6. DO object to any deviation of the agenda of the meeting. 7. If, during the meeting, it is proposed to discuss a point that, in your view, is inappropriately discussed between competitors, DO raise your concern and say that you oppose to further discussion on that point being held in your presence at this point in time. Do ensure that your concern is recorded and if it is decided to go on with the discussion leave the meeting.	1. DO NOT attend any trade association meeting without a clear agenda or with an agenda that includes discussions on guidelines on fees, or with an agenda including a "miscellaneous" or "other points" topic. 2. DO NOT take part in any informal discussions before or after the association meeting on any commercial matter. 3. DO NOT attend any unscheduled or side meeting held in parallel with a planned meeting. 4. DO NOT agree to exchange any sensitive commercial information with the trade association and/or other trade association members, even if the purpose is for the trade association to publish statistics; information can only be shared with the trade association's secretariat. Trade association members may require from the trade association a confidentiality undertaking.

When assessing whether conduct by a dominant undertaking amounts to an abuse, the CCS will have regard to various factors. In particular, the CCS will endeavour to determine:

(a) Whether a dominant position is achieved or maintained through conduct arising from efficiencies. Conduct arising from efficiencies will not be regarded as an abuse of dominance.

(b) The effects of the undertaking's conduct. In the Sistic Case, the CCS highlighted that "exclusionary conduct may be abusive to the extent that it harms competition". The CCS, and later the Competition Appeal Board, have, however, qualified this statement by deciding that it is sufficient to establish the likely (rather than the actual) effects of competition foreclosure for the purpose of the Section 47 prohibition.

(c) Whether there is any objective justification to the dominant undertaking's conduct. This is on the basis that the conduct is proportionate to the legitimate commercial interest which it is intended to protect.

(d) Whether there are any demonstrable benefits arising from the dominant undertakings conduct and whether the conduct is proportionate and necessary to the benefits claimed.

Examples of abusive conduct include:

(a) Predatory pricing – includes charging excessively low prices (below the average variable cost) or charging low prices (below average total cost) if coupled with a clear intention to eliminate a competitor or prevent entry into the market by a potential competitor;

(b) Limiting production, markets or technical development to the prejudice of consumers – includes artificially limiting the sources of supply of a product in order to provoke a raise in prices, or buy all rights relating to a competing product that is cheaper and/or more efficient only to maintain its dominant position on the market. Note that exclusive arrangements entered into by a dominant business, although they are not automatically prohibited, may have foreclosure effects (e.g. by impeding competitors to enter or expand in the market). This is generally the case where the exclusive agreement is on a long-term basis. As such, exclusive agreements by a dominant player may be viewed as artificially limiting markets, hence an abuse of dominance.

(c) Discriminatory treatment – includes treating similar customers differently, thereby placing one (1) of the customers at a

competitive disadvantage, unless this can be objectively justified. For instance, it is generally prohibited to offer better terms to one (1) customer than to another similar customer when both are competing against each other.

(d) Tying/Bundling – includes making the sale of one (1) product or service conditional upon the purchase of another distinct product or service by the customer. Typically, bundling refers to situation where a package of two (2) or more goods or services is offered and those goods or services cannot be bought separately.

Case Studies

To date, the CCS has only issued one (1) infringement decision in respect of a violation of the Section 47 prohibition, namely, an abuse of a dominant position by *SISTIC.com Pte Ltd* CCS 600/008/07 (4 June 2010) ("**Sistic Case**"), Case No CCS 600/008/07 on 4 June 2010 – *Abuse of a Dominant Position by SISTIC.com Pte Ltd* ("**Sistic Case**").

Importantly, however, the CCS has, in two (2) instances, closed an investigation into an alleged abuse of dominance further to undertakings provided by the parties investigated:

(a) In 2012, the CCS opened an investigation into the potentially anti-competitive restraints (such as exclusivity conditions and conditional rebates) that Coca Cola Singapore Beverages had in its supply agreements with on-premise retailers. This investigation was closed in 2013 (with no finding of dominance) after Coca Cola Singapore Beverages voluntarily removed the potentially infringing provisions from its contracts and undertook to the CCS not to impose exclusivity restrictions on its on-premises retailers nor to grant loyalty-inducing rebates.

(b) In 2014, the CCS opened an investigation into exclusivity agreements between Cordlife Group Limited, a company active in the cord blood bank industry, and baby fair organisers on the one hand and hospitals on the other hand. The CCS closed its investigation in 2015, further to Cordlife Group Limited's undertaking to remove the exclusive agreements in place and not to enter into exclusive arrangements with baby fair organisers and private maternity hospitals in Singapore.

The preceding two (2) case studies are interesting as there is no express specific power in the Competition Act for the CCS to accept commitments (apart from merger cases). Rather, the CCS has the power to do anything incidental to its functions under the Competition Act. Whilst the CCS has been considering crystalising the process for commitments/undertakings (in abuse cases), no regulations or guidelines have been issued so far in that regard. This is certainly something to look out for in the months to come.

What is the prohibition of mergers that SLC?

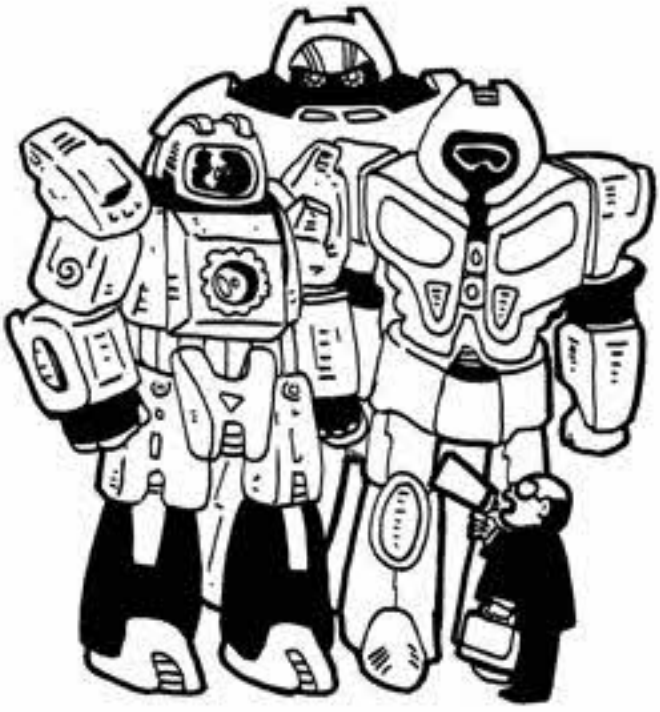
Section 54 of the Competition Act prohibits mergers that are likely to result in a SLC in any market for goods or services in Singapore. Singapore is one of the rare countries in the world which its merger regime provides for voluntary rather than compulsory notification of a merger. This means that parties to a merger are required to self-assess the effect of their transaction in Singapore and then decide to notify potentially problematic mergers to the CCS for its decision. The risk of not notifying a potentially objectionable merger is that the CCS has the power to investigate mergers on its own initiative under Section 62, and to take enforcement action if it deems that a non-notified merger leads to a substantial lessening of competition. Specifically, the CCS can impose financial penalties on the merger parties and/or issue directions, including ordering parties to unwind their anti-competitive merger.

There has been increased merger scrutiny by the CCS in recent years. In particular, the CCS has stepped up its market surveillance, including with the setting-up of a monitoring unit and issued letters to merger parties to request for more information in relation to non-notified mergers. This led to a significant amount of mergers or proposed mergers being notified to the CCS in the last two (2) years.

The term "merger" encompasses a wide range of transactions, including acquisitions (whether of shares or assets), takeovers, the creation of joint ventures, etc. The key element for a transaction to qualify as a merger is that there must be passing of control. To aid businesses in assessing the effect of their merger on competition in Singapore, the CCS has provided indicative thresholds which, if crossed, suggest that a SLC could result from the merger. Notification of a merger to the CCS is, therefore, highly recommended where, post-merger:

(a) the merged entity has a market share of 40% or more, or
(b) the merged entity has a market share of between 20% to 40% and the post-merger combined market share of the three (3) largest firms (in the relevant market) is 70% or more.

The fact that the thresholds above are crossed, however, does not mean that a SLC will necessarily result from the merger. First, the CCS has made clear that it will unlikely investigate mergers involving small companies, i.e. where the turnover in Singapore in the financial year preceding the transaction of each of the parties is below S$5 million and the combined worldwide turnover in the financial year preceding the transaction of all of the parties is below S$50 million. Second, the CCS will review a number of factors to determine whether the Merger would result in coordinated and/or non-coordinated effects or whether the competitive constraints on the merged entity post-merger will offset any potential SLC. Other factors the CCS will take into account include the fact that a party to the merger is genuinely failing and would exit the market but for the merger. In 2014, the CCS relied on "the failing firm" defence to clear the proposed acquisition of Tiger Airways Holdings Limited by Singapore Airlines limited; in this case, the CCS found that Tiger Airways was likely to exit its operations in the absence of the proposed acquisition.



"It is my client's contention that if the three of you robots merge into an even larger robot, it will substantially lessen competition in the giant robot sector."

Whilst most of the Mergers notified to the CCS have been cleared either with or without structural and/or behavioural commitments being offered, it is worth noting that the CCS has also blocked mergers. In early 2015, the CCS announced a provisional decision to prohibit the proposed acquisition of Radlink-Asia Pte Ltd by Parkway Holdings Ltd. After an in-depth review of the proposed transaction, the CCS concluded that the merger would substantially lessen competition in the market for the supply of radiopharmaceuticals in Singapore and in the market for the provision of radiology and imaging services. The parties have since dropped their transaction.

What are the Regulatory Processes under the Competition Law?

Investigations

The Competition Act gives the CCS strong administrative powers, including some backed by criminal sanctions, to investigate potential anti-competitive situations.

The CCS may commence an investigation if it has reasonable grounds for suspecting that the prohibitions of anti-competitive agreements, conduct or mergers have been infringed or are likely to be infringed. The CCS may decide to start an investigation on its own, further to a complaint or, in the case of cartels, further to a leniency application.

The investigating powers of the CCS include the power:

(a) to request any person to produce documents or information that CCS considers relevant to any matter investigated;
(b) to enter premises with or without a warrant. The term "premises" include any vehicle as well as domestic premises if such premises are used in connection with the affairs of an undertaking or if documents relating to the affairs of an undertaking are kept there;
(c) to search premises (with a warrant);
(d) to interview individuals; and
(e) to seize documents.

The failure to comply with a requirement to provide documents or information, the provision of false or misleading information, the destruction or concealment of documents, or the obstruction of the investigation by, for instance, delaying a CCS official in the discharge of his duties, are all offences under the Competition Act which can result in fines and/or imprisonment.

Where the CCS finds that an agreement, a conduct or a merger has infringed the Competition Act, it can issue any direction it deems appropriate to bring the infringement to an end and impose a financial penalty of up to ten per cent (10%) of the undertaking's turnover in Singapore (up to three (3) years). It is important to note that the term "undertaking" may include both a parent and its subsidiary, i.e. the turnover is not limited to that of the company established in Singapore and may encompass the turnover an entire group of companies derives from sales into Singapore.

Illustrative Examples

- If ABC Society is found to have infringed Section 34 of the Competition Act, for instance, by agreeing with its competitors on the minimum or maximum author fees to charge for writing scripts, then ABC Society and each of the members individually who participated, passively or otherwise, in the price-fixing agreement may be imposed with a penalty of up to ten per cent (10%) of their overall turnover in Singapore multiplied by three (3).
- Customers, including individual and corporate customers, and other third parties, may also claim damages if they commence an action in Court and the Court finds that they have indeed directly suffered a loss as a result of the price-fixing agreement.

Apart from the extensive investigative powers granted to the CCS as highlighted above, the Competition Act provides for various 'tools' to allow undertakings to ensure that their agreements, conduct or mergers do not fall foul of the Competition Act. Specifically, parties can notify the CCS of their agreements, conduct or mergers for guidance, or a decision as the case may be, that they do not violate the relevant provisions of the Competition Act.

What are notifications of agreements or conduct?

An undertaking may apply to the CCS for guidance or a decision as to whether, in the CCS' view, an agreement is likely to infringe, or has infringed, the Section 34 prohibition or whether the agreement is likely

to fall under a block exemption or is excluded; or whether conduct by the undertaking is likely to infringe the Section 47 prohibition.

To date, there have been no decisions issued as to whether a specific conduct would infringe the Section 47 prohibition or otherwise. However, a number of agreements have been notified to the CCS for a decision and where found that they do not violate the prohibition on anti-competitive agreements. Notably, the CCS has so far reviewed alliances among airlines, which were generally cleared on the basis of the net economic benefit exemption.

Leniency

Under the CCS' leniency programme, cartel members who whistle-blow on a cartel may receive immunity from, or a reduction on the amount of, financial penalties that will be imposed on the cartel. The leniency programme provides that the cartel member may receive the following benefits, among others, under certain conditions:

- Total immunity against financial penalties for the first cartel member to provide the CCS with evidence of the cartel activity before an investigation has commenced, provided that the CCS does not already have sufficient information to establish the existence of the alleged cartel activity;
- Reduction of up to 100% in the level of the financial penalties where the cartel member is the first to come forward to provide evidence of cartel activity once an investigation has commenced but before the CCS has sufficient information to establish the existence of the alleged cartel activity; or
- Reduction of up to 50% in the level of the financial penalties where the cartel member is not the first to come forward to provide evidence of cartel activity once an investigation has commenced but before the CCS has issued a notice of its intention to make an infringement decision.

In order for the cartel member to benefit from the leniency program, the information provided by the cartel member must be such as to provide the CCS with sufficient grounds to carry out a credible investigation or to add significant value to the CCS' investigations into the cartel. Further, to enjoy full immunity or a reduction in the level of the financial penalty, the cartel member must not have been the initiator of the cartel and it must not have taken any steps to coerce another undertaking to take part in the cartel. It must also comply with certain conditions, including, inter alia, providing to the CCS

all the information and evidence available to it with regards to the cartel activities; maintaining complete co-operation throughout the investigation and; refraining from further participation in the cartel (unless the CCS directs the leniency applicant to do so).

The CCS has implemented a marker system in its leniency programme for cartel members who are the first to apply for leniency in relation to a cartel. The marker system allows a potential leniency applicant who does not have the requisite information on the cartel when applying for leniency, to apply for a marker to secure a position in the queue and discuss with the CCS the timing and process of perfecting the marker by the prompt provision of relevant information. To perfect a marker, the cartel member must provide all information available to it in relation to the cartel activity. If the cartel member fails to perfect the marker, the next cartel member to apply for leniency will be allowed to perfect its marker and obtain immunity or a reduction of up to 100% in financial penalties.

Table 12. FAQs regarding competition law

Questions	Responses
Can ABC Society and its competitors exchange information/data in relation to their business within/ through their trade association?	**No – as a rule – where the information relates to sensitive business information, e.g.:** (a) future prices, terms and conditions of sale; (b) planned productions; (c) customers; and (d) Suppliers, etc. **Yes – as an exception (always check with your legal department or counsel) – where the information relates to, e.g. best industry practices**
Is the association allowed to provide suggestions as to how other countries pay their freelancers regardless of the nature of the services being offered?	**No – as a rule – where the information relates to sensitive business information, e.g.:** (a) future fees, rates, honouraria, etc.; (b) terms and conditions of engagement; (c) customers; and (d) suppliers etc. **Yes – as an exception (always check with your legal department or counsel) – where the information is publicly available on a website from that country; BUT this is not necessary if the information relates to, e.g.:** (a) best industry practices; (b) health & safety measures; and (c) past volumes of production or sales which are at least one (1) year old.

Questions	Responses
If ABC Society obtains information on the fees/rebates/ commissions/ discounts offered by its competitors provided to suppliers, can ABC Society use this information as a guideline in determining its own terms and conditions of hiring?	**Yes, as long as:** (a) the information does not come directly from a competitor; and (b) the information comes from a supplier or customer in the course of negotiations and is not used knowingly by ABC Society and its competitors as a conduit for exchanging information; or (c) the information has been gathered by ABC Society from public sources. In any event, it is recommended that ABC Society keeps track and evidence of the manner information on competitors' practices have been gathered.
Can different levels of fees/commission be applied to different groups of service providers according to their service provided, status and size?	**Yes, provided that:** (a) there are objective reasons that justify the grouping of the service providers in different categories; (b) the difference in the levels of the commission itself is based on objective criteria that apply across the board.
Can ABC Society grant special incentive programs to distributors in terms of a new product launch, business expansion, new areas penetration, new distributors' agreement incentive, etc.?	**Yes, provided that:** (a) the special incentive is linked to a specific event, e.g. a new product launch, or new area penetration; and (b) the special incentive does not amount to an exclusivity on the distributor.

CHAPTER 11

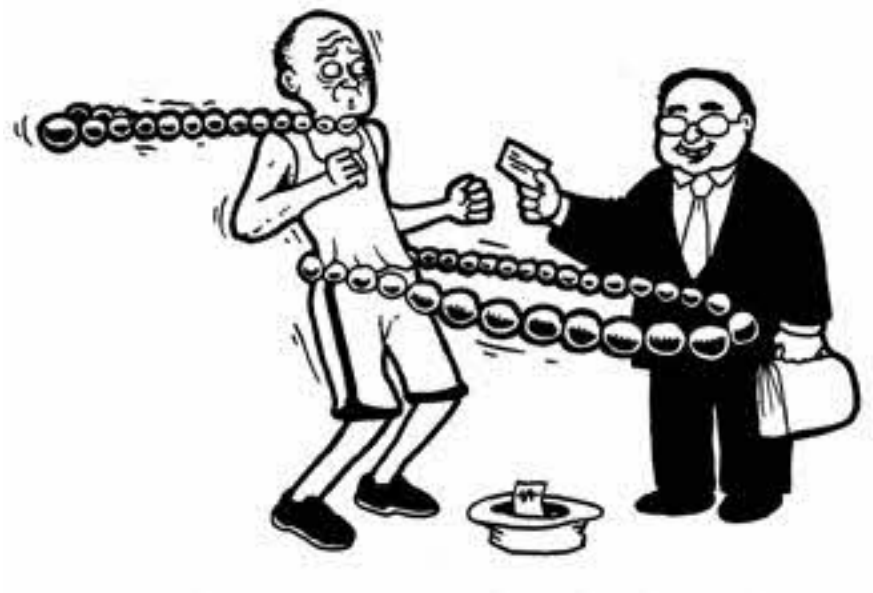
SETTING UP AN ARTS BUSINESS

"The way to get started is to quit talking and begin doing."

– Walt Disney

Overview

In deciding what kind of arts business you should set up, it is important to first have a clear idea about the aims and priorities of your organisation. This will help you choose the most appropriate legal structure for your business. This chapter highlights some of the key considerations that business owners face in choosing their preferred structure, and explains the advantages and disadvantages of the most common corporate structures available.



"If you want to really monetize this busking thing, give me a call."

What are the Differences between For-Profit Organisations and Non-Profit Organisations?

A for-profit organisation exists primarily to generate a commercial or monetary benefit for its owners. Profits from a for-profit organisation are permitted to be distributed to the organisation's owners for their personal benefit, typically in the form of dividends.

By contrast, non-profit organisations ("NPO"s) are legally constituted organisations whose main purpose is to support or engage in activities of public or private interest without any commercial or monetary profit. To be clear, NPOs are not expected to be loss-making – they can generate profits from their operations. However, an NPO is expected to use its profits to carry out its purpose. Any profit earned by an NPO is kept by the organisation for its future activities. NPOs can also use this profit to employ people and pay them reasonable salaries, and to meet other expenses.

NPOs enjoy certain legal benefits under Singapore law, because the law recognises that most NPOs exist for the purpose of helping the community. For example:

- there are certain legal structures that are only available to non-profit groups;
- there are a number of tax exemptions, concessions and benefits for eligible non-profit groups; and
- some government grant programmes and many private philanthropic bodies are set up only to fund non-profit groups.

All of the above are more fully described in this chapter.

Should I Adopt a Formal Legal Structure?

The first question you should consider is whether you want to adopt a formal legal structure for your business. As many freelance art professionals know, it is possible to set up and run a business without adopting a formal legal structure. In some cases, this may even be the best approach for your business, because it allows you to keep things very flexible. Some of the key benefits to not adopting a formal legal structure for your arts business include the following:

- your organisation can remain informal and does not have to hold meetings in a specific format;
- your organisation does not have to register with the government or tell the government or the public who its members are or what its financial situation is; and
- your organisation is likely to incur lower overall adminstrative costs as it would not have to pay any registration or annual fees to the government.

However, many businesses have discovered that there are also significant benefits to adopting a legal structure, particularly as they grow larger and more complex. Some of these benefits include the following:

- adopting a formal legal structure involves complying with certain administrative requirements under the law, which can encourage proper management and governance within the organisation;
- some legal structures allow your organisation to exist in perpetuity because the organisation has a legal identity separate to that of the people involved in it. This means that your organisation will continue to exist even when members change;
- depending on the legal structure you choose, you may be able to limit your liability (explained further below) and protect your personal assets; and
- many government grants and concessions, such as Institution of Public Character ("**IPC**") status, are available only to organisations that exist as formal legal entities.

Whether it makes sense for your organisation to adopt a formal legal structure will depend on its objectives and business model. As a starting point, however, you should at least consider the use of a formal legal structure as you set up your arts organisation. Some of key factors you should consider are as follows:

- How big is your vision for your business? Do you intend to involve or employ other people in your business, or are you expecting to be the only person involved?
- Do you want full control of your business, or do you plan to delegate decision-making responsibility to one or more other people?
- Do you anticipate having to deal with potential legal liabilities, such as customer claims or potential disputes with your partners or clients, in the course of your operations?
- Are you prepared to spend time ensuring that your business is in compliance with the various rules and regulations applicable to the legal structure you have chosen?
- Do you intend to undertake any general fundraising from the public, or will your business be entirely self-funded?

The following two (2) sections contain a brief description of each of the different types of legal structures that are available to both for-profit organisations and NPOs, together with a short analysis of the pros and cons associated with each structure. The Section "What are the Registration Requirements?" contains further information on how to register an organisation under each of these legal structures.

What are the Different Types of For-Profit Legal Structures?

Sole proprietorship

A sole proprietorship is the simplest and most flexible business structure. As its name suggests, a sole proprietorship is owned by one (1) person, who has absolute say regarding its daily operations and management affairs. Sole proprietorships are not required to audit their accounts annually or to file annual returns with the Accounting and Corporate Regulatory Authority ("ACRA"). This simple structure is often used by freelancers and small individually-owned enterprises whose businesses either carry minimal risks or have not reached a scale that justifies a more complex legal form.

Table 13. Pros and cons of a sole proprietorship

Pros	Cons
• Sole proprietorships are simple to set up due to their minimal administrative requirements. • Sole proprietorships are relatively easier to maintain and manage. There are no ongoing filing requirements apart from the annual renewal of the sole proprietorship. • Sole proprietorships can be terminated swiftly, with fewer legal formalities.	• Sole proprietors are not entitled to significant legal protection because sole proprietorships are not distinct legal entities from the person running them. The sole proprietor will be held personally accountable for all the liabilities arising from his business, such that creditors and claimants may directly make claims against the sole proprietor's personal wealth and assets. • Many government incentive schemes, such as tax-exempt status and other corporate business incentives, are made available only to corporate entities, and therefore cannot be accessed by sole proprietorships because they are not distinct legal entities. • Issues of perpetual succession (i.e. the continuation of an organisation's existence despite the death of members, change in membership or exit of members) may arise in the event of the departure of the proprietor. For example, existing contracts with employees and suppliers will become invalid if the sole proprietor ceases to hold the business.

General partnership

A general partnership is a business formed by more than one (1) individual. A general partnership cannot have more than 20 partners – general partnerships with more than 20 partners must be registered as a company. The management of a general partnership rests with all of its partners, each of whom will have equal rights in the decision-making of the general partnership unless there is a partnership agreement that specifies otherwise. A general partnership is not required to audit its accounts annually or submit its annual returns to ACRA.

Table 14. Pros and cons of a general partnership

Pros	Cons
• General partnerships are relatively easy to set up and administer. • Partners in a general partnership are taxed on their respective shares of income from the general partnership at their personal rates of income tax. Depending on the income of each partner, paying tax purely in respect of personal income may be more advantageous than setting up a company and being liable for corporate tax which is currently fixed at a rate of 17%. • Funding may also be easier to obtain compared to sole proprietorships, as a wider assembly of partners may provide access to a bigger pool of funds or assets for the purpose of providing security if the general partnership needs to access loans from banks. However, many banks will require each partner in a general partnership to personally guarantee any loan that is made to a general partnership, so partners will likely remain responsible for the business liabilities of the general partnership • Partners are incentivised to contribute by pooling expertise and experience to increase the partnership's profitability.	• General partnerships are not distinct legal entities. In any legal action, the general partnership can be sued in the names of individual partners. Unless there are specific agreements to the contrary, each partner of a general partnership is also jointly and severally liable for the liabilities of the general partnership. This means that the actions of one partner can potentially cause losses to every other partner of the general partnership. • Many government incentive schemes, such as tax-exempt status and other corporate business incentives, are made available only to corporate entities, and therefore cannot be accessed by general partnerships because they are not distinct legal entities. • As with sole proprietorships, there is also no perpetual succession of general partnerships. A general partnership will thus dissolve with the departure or the death of any one of the partners. However, most partnership agreements provide for these types of events, with the share of the departed partner usually being purchased by the remaining partners in the partnership.

Limited partnership ("LP")

An LP consists of general partners and limited partners. The general partners of an LP are in the same legal position as the partners of a general partnership, as they have management control over (and are jointly and severally liable for) the debts of the LP. The liabilities of limited partners in respect of the partnership's debts and obligations are limited to their individual contributions to the LP in accordance with whatever the partners have agreed. Limited partners forgo their rights to be involved in the management of the business in return for their limited liability protection. They will however have access to the partnership's books and may offer advice (which the general partner(s) are not obligated to follow!) on the state of the business.

If, however, a limited partner participates in the management of the business, he or she forfeits his or her "limited liability" status and will then be treated as a general partner who is liable for the debts and obligations incurred by the LP. The First Schedule to the Limited Partnerships Act (Cap. 163B, 2010 Rev. Ed. Sing.) contains a list of activities a limited partner may undertake which will not be construed as "participation in management". Examples of this include contracting with the LP and acting as an agent or employee of the LP within the scope of the authority conferred by the partners.

Similar to a general partnership, an LP is not required by law to have its accounts audited or filed with ACRA. It is only required to keep proper accounting records that will enable true and fair financial statements to be prepared if requested by the Registrar of LPs. There is also no maximum limit on the number of partners in an LP.

Table 15. Pros and cons of a limited partnership

Pros	Cons
• LPs are easy to administer, with only basic account-keeping requirements and no ongoing filing obligations. The limited partners are not required to disclose the amount they invest in the LP at the point of registration.	• As an LP is not considered a separate legal entity, the general partner(s) will be personally liable for all the debts and obligations incurred by the LP. • Like sole proprietorships and general partnerships, LPs are not eligible for many corporate tax exemptions and benefits, and face the same difficulties with perpetual succession, unless this is provided for in the partnership agreement.

Limited liability partnership ("LLP")

An LLP combines the features of a partnership and a company. An LLP gives partners the flexibility of operating as a partnership while protecting their investment in ways similar to private limited companies. There must be at least two (2) partners and one (1) manager at all times. A partner of the LLP can also be the manager of the LLP.

The manager of a LLP has certain significant legal responsibilities. For example, the manager is required to file annual declarations of solvency or insolvency with ACRA stating whether the LLP is able to pay its debts as they become due in the normal course of the LLP's business. If the manager makes this declaration without having reasonable grounds for his or her opinion, the manager may be guilty of a criminal offence. In addition, the manager must ensure that the LLP's invoices and official correspondence contain the name and registration number of the LLP as well as a statement that the LLP is registered with limited liability. The manager must also lodge any change in particulars of the LLP with the Registrar of LLPs. If any of these duties are not complied with and result in penalties imposed on the LLP, the manager will be personally liable for these penalties.

Table 16. Pros and cons of a limited liability partnership

Pros	Cons
• LLPs have separate legal identities from those of their partners. A LLP can therefore own properties, enter into contracts and sue or be sued in its own name. A partner of an LLP enjoys limited personal liability and thus will not be held personally responsible for the wrongful acts of another partner. However, each partner will still be liable for any claims and losses that result from his or her own wrongful act or omission. • LLPs benefit from perpetual succession. Thus, the resignation or death of any of the partners does not affect the existence, rights or liabilities of the LLP.	• An LLP is required to keep accounting records that adequately explain the transactions and financial position of the LLP. • The annual declaration of solvency or insolvency will be made publicly available. If the declaration is made without reasonable grounds, the manager could face criminal liability.

An LLP is not required to audit its accounts annually or submit its annual returns to ACRA. It is only required to keep proper accounting

records which sufficiently explain its transactions and financial position, as well as prepare profit and loss accounts and balance sheets if requested by the Registrar of LLPs.

Private Limited Company

A private limited company has a separate legal identity from that of its members or shareholders. Private limited companies can be limited by shares, and each member's or shareholder's liability is limited to the amount he or she invests in the company. Private companies are limited to not more than 50 shareholders (the owners of the company). Every company must have, among other things, (a) a constitution which governs the conduct and relationships between the company and its members, (b) at least one (1) director who is ordinarily resident in Singapore, (c) an annual general meeting once every calendar year, (d) an annual return (which provides essential information about the

Table 17. Pros and cons of a private limited company

Pros	Cons

• A company's existence does not depend on the continued participation of any of its members.
• As a company is a distinct legal entity from its shareholders, it may:
  • raise capital from investors or banks;
  • sue or be sued in its own name without incurring further liability to its members; and
  • hold land and other assets in its own name.
• Certain government incentives, such as the SPRING Startup Enterprise Development Scheme, the Business Angels Scheme and the ACE Start-up Scheme, are available only to companies. Please refer to https://www.spring.gov.sg/ for more details.
	• Public and private companies have to comply with a number of legal and administrative requirements, including those concerning the appointment of directors, the conduct of annual general meetings and the appointment of company auditors and the company secretary.

company such as its members, activities and financial position) lodged with ACRA and (e) financial reports which have been audited by a professional accounting firm, unless the company's annual revenue is S$5 million or less (in which case a professional audit of the financial reports will not be required).

A private company will be taxed at the corporate tax rate of 17% with a partial exemption for the first S$300,000 of chargeable income. If the relevant conditions are met, new start-up companies may be granted enhanced tax exemptions for each of their first three (3) consecutive years of assessment. For the year of assessment 2017 (i.e. the preceding year starting 1 January 2016 and ending 31 December 2016), companies will receive a 50% corporate income tax rebate that is subject to a cap of S$20,000 per year of assessment. Further details of the corporate tax regime can be found on the IRAS website (www.iras.gov.sg).

What are the Different Types of Non-Profit Legal Structures?

With non-profit legal structures, the key legal considerations do not so much involve the advantages and disadvantages of the different legal forms, but rather which legal structure best enables your organisation to achieve its intended result. The following are the main legal forms that are adopted by NPOs in Singapore.

Society

Governed by the Societies Act (Cap. 311, 2014 Rev. Ed. Sing.), societies are suitable for membership or volunteer-based groups that are small but strongly-linked to communities. An example of an arts society is the Photographic Society of Singapore which, among other things, provides workshops and seminars to promote the appreciation and practice of photography, and provides platforms for members to showcase their work.

Members of societies may be required to contribute to the funds of the society by way of subscription or annual fees, although many societies generate funds through donations from the public and fund-raising activities.

Societies are relatively easy to establish and to maintain, with fewer annual reporting requirements and less onerous statutory obligations as compared to other non-profit legal structures. Societies can also be appealing to donors who prefer donating and funding entities which are formally and legally recognised.

However, unlike a company, a society does not have a separate legal identity from its members. This means that all of its members will be held personally liable for its losses. Further, a society is required to submit its annual return and audited accounts within one month of the holding of its annual general meeting to the Registrar of Societies, or if no annual general meeting is held, once in every calendar year within one month after the close of its financial year.

A society can have a president, a secretary and committee members. These officers do not require particular qualifications. However, no person is permitted to act as an officer of a registered society if he or she has been convicted for an offence involving the unlawful expenditure of the funds of the society or of other criminal offence(s).

If you are planning to set up a society which is affiliated with an existing entity, then you will need to submit a copy of the affiliated entity's constitution and a letter from the affiliated entity supporting the registration of the society.



"Chope! If we register our society, then we won't be secret anymore, correct not?"

Charitable trusts

A charitable trust is a legal arrangement where a group of people (the trustees) administer assets (the trust property) for a charitable purpose. For an arts business, the charitable purpose might include:

- the advancement of education;
- the advancement of citizenship or community development; or
- the advancement of arts, heritage or science.

Charitable trusts are governed under the Trustees Act (Cap. 337, 2005 Rev. Ed. Sing.), along with all other types of trusts in Singapore.

A charitable trust does not require a permanent place of business or regular annual general meetings to be conducted. Trustees of charitable trusts have the power to manage the trust property to give effect to the specified charitable purpose, and must do so to the best of their knowledge and experience.

A charitable trust does not have a separate legal identity. Accordingly, all liabilities arising from the charitable trust will be borne by its trustees. This may not be ideal for a charitable trust which is involved in many discretionary transactions, as the trustees of the charitable trust may be exposed to significant potential liabilities. Generally, trustees are required to comply with strict accounting and auditing regulations, and failure or negligence in doing so will result in a penalty. Consequently, the costs of establishing and managing a charitable trust can be quite high.

Company Limited by Guarantee ("CLG")

A CLG is an attractive legal structure for non-profit groups that require corporate status and want the advantage of limited liability. Every CLG has a constitution that governs the conduct and relationships between the company and its members, with liabilities limited to the guarantee given by each member. CLGs are prohibited from paying dividends and profits to their members. In the event of a winding-up of a CLG, any residual property that remains after settling the CLG's liabilities will not be distributed to its members, but instead to institutions having similar objects as the CLG or to a registered charity as determined by the Commissioner of Charities. Examples of CLGs include the Intercultural Theatre Institute Ltd., which is an independent theatre school for students looking to earn a professional diploma in intercultural theatre, and the Musicians Guild (Singapore) Ltd, which is a professional association with the aim of supporting the community of working musicians in their career and professional development.

The amount guaranteed by each member of the CLG can be nominal. The CLG has a separate legal identity so it may sue or be sued in its own name.

However, a CLG is required to meet stringent legal obligations, including those related to the annual audit of accounts, the holding of annual general meetings and the filing of annual returns with ACRA.

Co-operative

A co-operative is a business entity which is underpinned by a social mission.

Co-operatives are often created for the purpose of uplifting the socio-economic well-being of their members. A co-operative identifies social problems and attempts to provide solutions to alleviate or address such issues. It serves the needs of its members without sacrificing the financial bottom line of the co-operative.

Compared to most non-profit legal structures, co-operatives are more mindful of their financial position and aim to remain economically viable. Members make equitable contributions to the capital as required by the co-operative and accept and undertake a fair share of the risks and benefits. Co-operatives work on the principles of self-help and mutual assistance to provide services to their members.

An example would be the NTUC FairPrice Co-operative Limited.

A co-operative is governed by the Co-operative Societies Act (Cap. 62, 2009 Rev. Ed. Sing.) and the Co-operative Societies Rules 2009 (Cap. 62, Section 349, 2009 Rev. Ed. Sing.) and has to be registered with the Registry of Co-operative Societies. There are generally two (2) pre-requisites:

(a) Members of a co-operative get together to undertake feasibility study of the society including its objects, constitution and by-laws; and
(b) They have to submit a business plan of the co-operative to the Registrar.

What are the Registration Requirements?

Registration of for-profit legal structures

Any activity which is carried out on a continuing basis for the purpose of profit is required to be registered with ACRA. There are a few

exceptions to registration, for example if an individual carries on business under only the individual's full name (which freelancers may do) or if any firm of two (2) or more individuals carries on business under only the full names of all the individuals.

You can register a sole proprietorship, general partnership, LP, LLP, or private limited company through ACRA by submitting an application online via BizFile at https://www.acra.gov.sg/BizFile and paying the applicable registration fee. For 2017, the registration fees for for-profit legal structures are shown in Table 18.

Table 18. Registration fees for for-profit legal structures.

Legal Structure	Registration Fee (including S$15 name application fee)
Sole proprietorship	S$115 for a one (1)-year registration fee or $175 for a three (3)-year registration fee
General partnership	
LP	
LLP	S$115
Private Limited Company	S$315

ACRA's website contains a useful step-by-step guide on registration. Alternatively, you may wish to engage the services of a professional firm (e.g. a lawyer or a chartered accountant) or a service bureau to submit an online application, but you should be aware that these options will cost more. The registration application is usually processed within 15 minutes after the name application fee is paid, however it may take between 14 days and two (2) months, depending on whether the application needs to be referred to another agency for approval or review. For example, if the intention of your organisation is to open an arts school or to engage in other form of arts education, the application will be referred to the Ministry of Education.

For-profit organisations are also required to comply on an ongoing basis with other legal requirements. These requirements vary depending on the type of legal structure you choose to adopt:

Sole proprietorship or general partnership

The following documents must be submitted to ACRA to register a sole proprietorship or a general partnership: (a) the proposed business name, (b) a description of the principal activities, (c) a local business address, (d) a local residential address, (e) a copy of

the sole proprietor's or partner's Singapore identification and (f) a declaration of compliance and statement of non-disqualification, all as further explained on the ACRA website.

Where the sole proprietor or all the partners of a general partnership reside outside Singapore, the Registrar will require a local manager (who must either be a Singapore citizen or Singapore permanent resident) to be appointed.

If you are considering entering into a general partnership, you and your partners should draw up a partnership agreement which defines certain partnership matters such as the roles and responsibilities of the partners as well as how the profits are to be distributed amongst the partners. While this is not a legal requirement, agreements of this nature can be instrumental in regulating the operations of the general partnership, and can be very useful in avoiding future confusion or disputes among the partners.

Limited partnership

An LP must comprise at least one (1) general partner and at least one (1) limited partner. If the general partners are residing outside of Singapore then a local manager who is ordinarily resident in Singapore needs to be appointed.

An LP may be registered by lodging with the Registrar of Limited Partnerships a statement containing particulars such as the name of the LP, proposed principal place of business, nature of the proposed business and details about the partners and managers.

Although not legally required, you and your partners should also draw up an LP agreement to govern the various matters related to the LP such as the contribution of the partners to the LP and the relationship between these partners.

Limited liability partnership

An LLP must comprise at least two (2) partners and at least one (1) manager who is ordinarily resident in Singapore. An LLP may be registered by lodging with the Registrar of Limited Liability Partnerships a statement registered containing particulars such as the name of the LLP, proposed registered office, nature of the proposed business and details of the partners and managers.

Although not legally required, you and your partners should also draw up an LLP agreement to govern matters such as the mutual rights and duties of the LLP and its partners. In the absence of this agreement, the provisions set out in the First Schedule of the Limited Liability Partnership Act (Cap. 163A, 2006 Rev. Ed. Sing.) will apply.

Private limited company

A private limited company must have at least one (1) shareholder and at least one (1) director ordinarily resident in Singapore. A private limited company may be incorporated by submitting to the Registrar of Companies the constitution of the proposed company together with such other information that the Registrar of Companies may prescribe. As a starting point, you may wish to consider adopting or referring to the sample constitution which is provided on the ACRA website.

Registration of non-profit legal structures

Society

A society must be registered with the Registry of Societies. This can be done by registering online via the integrated Registry of Societies electronic system. A society must submit its proposed constitution to the Registry of Societies for approval before the society may be formed. Once the society has been formed, the constitution cannot be altered without the approval of the Registrar of Societies.

In general, the constitution of a society should set out:

- the aims and objects for which the society is formed, or which it may pursue, or for which its funds may be applied;
- the qualifications for membership and for the holding of any office;
- the method of appointment or election to any office;
- the rules by which the society is to be governed;
- the formation of committees to carry out approved projects and programmes of the society;
- the formulation of by-laws which do not conflict with the constitution for carrying out the day-to-day administration of the society; and
- the method and manner by and in which any of the above matters may be amended.

For a sample constitution and further instructions, please refer to the Registry of Societies website.

Societies are also required to have a place of business, which refers to the place where the records and books of accounts of the society are kept.

Charitable trust

A charitable trust must be administered by a board of trustees consisting of at least three (3) persons, two (2) of whom must be Singapore citizens or permanent residents. The trust will be constituted by a trust deed, which is the governing document of the trust. The trust deed should include, among other things, the objectives of the charitable trust, the members of management, a procedure to manage conflicts of interest, the quorum for any meeting (i.e. the minimum number of members that must be present at a meeting to make the proceedings of the meeting valid) and the circumstances under which the trust can be terminated. Please refer to the Charities (Registration of Charities) Regulations (Cap. 37, Section 48, 2008 Rev. Ed. Sing.) and the Charities Portal (www.charities.gov.sg) for more information.

Company limited by guarantee

Similar to for-profit companies, a company limited by guarantee must to be registered with ACRA by submitting an online application via BizFile. The company must have at least one (1) shareholder and at least one (1) director ordinarily resident in Singapore. A company limited by guarantee may be incorporated by submitting to the Registrar of Companies the constitution of the proposed company, together with such other information that the Registrar of Companies may prescribe, and by paying a registration fee of S$315 (which includes a name application fee of S$15). As a starting point, you may wish to consider adopting or referring to the sample constitution which is provided on the ACRA website.

Co-operative

A co-operative must be registered with the Registry of Co-operative Societies.

The following are key steps which are required to form a co-operative society:

1. Set up a Pro-tem Committee with at least three (3) members to undertake a feasibility study to determine the economic and financial viability of the proposed society, prepare a viability statement, and consider the objectives, constitution and by-laws of the society.

2. Submit the following documents for the Registrar of Co-operative Societies' comments:
    - A viability statement (containing a business plan and the cash flow projections for at least three (3) years);
    - Particulars of individual members, including name, NRIC number, date of birth, citizenship, occupation, address and contact numbers;
    - Draft by-laws which include matters spelt out in the Schedule of the Co-operative Societies Act.
3. After obtaining the Registrar's comments, convene a preliminary meeting of at least ten (10) persons qualified for membership to:
    - Adopt the by-laws (which have incorporated the Registry's comments; and
    - Pass the resolution to accept all the rights, duties and legal responsibilities prescribed by the by-laws.
4. Apply for registration by submitting the following documents:
    - Application form;
    - Personal details of at least ten (10) potential members;
    - By-Laws;
    - Business plans and three (3)-year financial projections; and
    - Minutes of the preliminary meeting and signatures of all present at the meeting.

Obtaining charity and IPC status

Registering as a charity

If your organisation is:

- a society, a trust or a company limited by guarantee;
- set up for exclusively charitable purposes beneficial wholly or substantially to the community in Singapore (such as the advancement of arts or heritage); and
- carrying on its activities, including business activities, to achieve these charitable purposes,

then you may wish to consider applying to register it as a charity through the Charities Portal (www.charities.gov.sg). The registration must be effected within three (3) months of the establishment of your organisation.

Registered charities automatically enjoy a full exemption from income tax. With the approval of the Comptroller of Property Tax at IRAS, charities may also be entitled to a full exemption from property tax on any of their properties which are used exclusively for charitable

purposes, or a partial property tax exemption if only a portion of the property is used for charitable purposes. Having "charity" status may also give your organisation greater social credibility and encourage donations and funding from the public.

An organisation registered as a charity is expected to focus its efforts in carrying out activities which contribute directly to the advancement of the charitable objects which it was set to promote. In doing so, a charity can make a profit as long as the funds raised are retained by the charity and used completely for or on behalf of the beneficiaries of the charity to advance the primary purpose. A charity wishing to use the profit for or engage in any other non-primary purpose activities that do not directly advance or support the objects of the charity must set up a separate subsidiary or other entity to undertake them, unless such activities have no material impact on the charity's financial position and do not expose the assets of the charity to significant risk. You should note that a subsidiary of a charity may not itself qualify as a charity, and may therefore be subject to the same registration and tax requirements as any other for-profit organisation.

For further details on charity requirements and the registration process, please visit www.charities.gov.sg.

Registering as an IPC

With the approval of the Commissioner of Charities, certain charities may also be eligible to register as IPCs. In addition to all the benefits of being a charity, IPCs are permitted to issue tax-deductible receipts when they receive donations from the public, which will qualify donors for tax relief. Donors will be entitled to enhanced tax deductions (250% for donations in 2017 and 2018) of the value of the donations made, as long as the donor does not receive any commercial benefit from the donation.

IPCs are regulated by the Charities (Institutions of a Public Character) Regulations (Cap. 37, Section 40C, 2008 Rev. Ed. Sing.). Since IPCs offer the additional benefit of tax-deductible receipts, they are governed by stricter guidelines as compared to other charities. IPCs must fulfil their legal obligations as charities in addition to the requirements imposed upon them as IPCs.

An application for registration as an IPC may be submitted online at www.charities.gov.sg.

Can I Select Any Name for My Organisation?

You are generally free to choose a name for your organisation, as long as ACRA is of the opinion that the name is not:

- undesirable;
- identical to that of another business;
- identical to a name already reserved by another business; or
- a name of a kind that the Minister has directed the Registrar not to accept for registration (e.g. Temasek).

For societies, there are additional names which require a letter of support from the relevant authorities. Please refer to http://www.ifaq.gov.sg/MHA/apps/fcd_faqmain.aspx#TOPIC_1243 for specific details.

How can I finance my business?

Fundraising is a significant consideration for many organisations. Generally, there are four (4) ways you can finance your arts organisation:

- apply for a grant;
- obtain a loan;
- sell part of your business (equity); or
- seek crowdfunding.

If your organisation is a charity or an IPC, you may also be seeking to solicit donations from members of the public.

In deciding how best to raise funds for your organisation, you will need to consider your legal structure, the associated risks and your obligations to the person giving you the money.

Grants

Grants from the government

There are a number of government agencies that fund arts-related activities.

SPRING Singapore is a government agency under the Ministry of Trade and Industry responsible for promoting the growth of Singapore enterprises. SPRING has implemented a number of programmes which provide specific support for certain types of start-ups, which (depending on the nature of your business) may be a source of funds for your new arts organisation. Please visit https://www.spring.gov.sg/ for more information on their programmes. Depending on the type of grant, the funds may be given to you as a loan, donation or in

exchange for a share of your enterprise's ownership and profits. The grants usually fall into two (2) main categories:

- fixed sum cash grant: this is a set amount of money given to a finite number of selected applicants; or
- co-contribution schemes: this entitles you to receive an amount of funds which increases proportionally to what you are able to are able raise in capital from other parties. Most co-contribution schemes impose a maximum amount on how much an applicant is permitted to receive in co-contributions.

The IMDA has implemented various assistance schemes for media companies. An example of this is the production assistance scheme whereby IMDA will support up to 40% of qualifying expenses including, but not limited to, manpower, professional fees, intellectual property licensing, location and equipment rental. Please refer to https://www.imda.gov.sg/ for more information about their schemes.

The NAC provides funding to encourage the production of and participation in the arts across a variety of fields. The NAC has an extensive list of schemes such as the seed grant, which helps new or emerging non-profit arts organisations by funding up to 70% of their operating costs. For more details on their schemes, please refer to https://www.nac.gov.sg/whatwedo/support/funding.html.

The Singapore Centre for Social Enterprise ("raiSE") was set up to raise awareness of social entrepreneurship and provide support for social enterprises in Singapore. raiSE provides a range of support including funding, advisory services, training, relevant resources and networks, with the hope of strengthening the social enterprise sector in Singapore. Please visit https://www.raise.sg/ for more details on their initiatives.

Grants from organisations

Some large multinational organisations offer grant schemes relevant to their field of business to promote non-profit organisations as part of their general corporate social responsibility programmes.

You can also seek funding from the Community Foundation of Singapore, a charitable foundation which aims to direct philanthropists to charities and causes with an impact on the community.

If your organisation is non-profit, you may also seek funding from the National Council of Social Service. The National Council of Social

Service administers a number of grants to enable voluntary welfare organisations, including charities, to achieve their aims in projects and services.

Loans

A loan is a contractual agreement between the lender (usually a financial institution) and a borrower whereby a borrower receives money from the lender and in return promises to repay the borrowed amount plus interest. Before entering into a loan agreement, you should consider the terms carefully (such as the repayment term, interest rate, acceleration clauses that entitle the lender to immediately demand the repayment of loans, and what if any, security or collateral is required by the lender), and decide whether your organisation can fulfil them. It is therefore important that you obtain legal advice before your organisation enters into a loan agreement. If you are a sole proprietor or a general partner in a partnership, you should also note that you could be personally liable for the debts of your organisation.

Equity

Alternatively, you can consider equity financing to eliminate the risk of the inability to repay the loan. This is essentially selling a portion of your organisation to investors through selling shares in return for receiving the price of the shares. An advantage is that the risk of the business rests partially with the investors and there is no obligation to repay the money to investors if the organisation does not do well. However, investors will gain control over your company through their shareholding and you may also need to share your profits and decision – making process with them. You should therefore have a thorough discussion with any potential investors prior to the sale of any shares.

Crowdfunding

A common way of crowdfunding is sourcing small contributions from many individuals in order to finance a project. Crowdfunding is typically done through licensed crowdfunding companies, many of which operate off the web. Crowdfunding may be appropriate if you have a new product design which needs funding or an arts project you would like to pursue on a larger scale. Crowdfunders pledge money towards a project because they share your vision, appreciate the idea of your product or want to see your idea succeed. In some cases, crowdfunding can be structured such that the funders will not share any ownership or profits of your organisation (also known as donation-based crowdfunding), while in others the funders may get a reward such as early access to your product (this is known as reward-based crowdfunding).

You should note that certain types of crowdfunding efforts may raise legal issues for your company. For example, "equity-based" crowdfunding, where a company offers shares to contributors in exchange for funding, would be an offer of securities under Singapore law which is regulated by the Monetary Authority of Singapore. Similarly, a lending-based crowdfunding model, which involves individual contributors making loans to project owners with promised interest in return, could raise issues under the Moneylenders Act (Cap. 188, 2010 Rev. Ed. Sing.) and would again be subject to regulation by the Monetary Authority of Singapore.



"Well, ye-es, asking Mummy and Daddy for a handout is also a form of fundraising..."

Are there Any Other Regulatory Requirements?

Depending on the type of arts business you plan to run, you may have to apply for and obtain licences from the relevant authorities before you may legally commence operations. You should consider applying for the necessary licences at or before the time you register your organisation with ACRA or the Registry of Societies, as applicable.

A few examples of licences and permits you may need to apply for as an arts business are the following:

- Arts Entertainment Licence;
- Public Entertainment Licence; and
- Copyright Licence.

You can get a general indication of the licence(s) you may need by searching on https://licence1.business.gov.sg/, which is a one-stop portal for all of the licences you may be required to have. You should also seek further professional advice to ensure you have obtained all the necessary licences.

Other Useful Resources

ACRA How-To-Guides: https://www.acra.gov.sg/how_To_Guides/

Charity Portal: https://www.charities.gov.sg

Registry of Societies: https://www.ros.mha.gov.sg

Inland Revenue Authority of Singapore: www.iras.gov.sg

Singapore National Co-operative Foundation: http://www.sncf.coop/

CHAPTER 12
SEEKING LEGAL ASSISTANCE

"Only one thing is impossible for God: to find any sense in any copyright law on the planet."

– Mark Twain

Engaging a Lawyer

The law often appears to be daunting and incomprehensible to the man on the street. However, intimidating as it may seem, remember that the law is in place to protect your rights as well. In order to enforce your rights effectively and obtain what you are entitled to, it is important that you get accurate information and advice from legally trained professionals.

Your friends or family may claim to know "someone" who apparently went through the same ordeal and you may be tempted to seek their advice, but you must bear in mind that no two (2) cases are exactly the same, and much depends on the facts and circumstances of each case. Thus, if you have any legal issues or queries, do consult a lawyer as soon as possible. This could save you a lot of time, money and unnecessary distress down the road.



The Lawyer-Client Relationship

You must be able to build a relationship of trust and confidence with your lawyer.

Solicitor-client privilege

Your lawyer has the responsibility to keep your information confidential. Ordinarily, even the Court cannot force a lawyer to reveal conversations you may have had with him, without your permission.

Your lawyer's firm

When you hire a lawyer, you are also hiring the law practice which the lawyer works for. All members of the law practice and its staff have the same duties of confidentiality toward you and your matter, as does your own lawyer.

Conflict of interest

Your lawyer owes you a duty to act in your interest and he or she must avoid any conflict, both real and potential. For example, your lawyer should not act for another client whose interest are against yours, such as the party whom you are claiming against. Your lawyer also should not have any personal interests or involvement in the matter which might prevent him or her from acting in your best interest. If there is any potential conflict, the lawyer should inform you and make full disclosure. If necessary, the lawyer may obtain your informed consent in writing to allow him or her to act for you despite the conflict or potential conflict that may arise.

Your instructions

Your lawyer will try to understand from you what you hope to achieve within the law and the lawyer's professional duties. Your lawyer cannot follow instructions from you that would break any law, or breach the lawyer's duties to the Court or to the legal profession.

Choosing a Lawyer

The Ministry of Law has an online directory of the names, addresses and other useful information of all law practices and practising lawyers in Singapore, and may be accessed at: https://www.mlaw.gov.sg/eservices/lsra/lsra-home/. You can also search the list of law practices that have advertised specialist practice areas on the Law Society website at http://www.lawsociety.org.sg/forPublic/FindaLawFirmLawyer/FindaLawFirm.aspx, but note that the Law Society is not permitted to recommend lawyers to you.

The recommendations of friends, family and other people who have faced similar legal or potential problems may also be helpful in your selection.

To avoid any misunderstanding later on, it may be useful to reach an early agreement on the legal fees and also have the lawyer give you an estimate of the disbursements likely to be incurred. In addition, you should be independently satisfied that your lawyer has the necessary expertise, knowledge and experience to assist you in your matter. You should also be satisfied that your lawyer is in a position to give you independent legal advice, for example a lawyer acting for an opposing party in a dispute cannot represent you except under particular circumstances with your permission. You may seek a second opinion from another lawyer.

Duties Your Lawyer Owes You

You must be able to build a relationship of trust and confidence with your lawyer.

Lawyers are required under their professional conduct rules to:

- exercise diligence and honesty in their dealings with you;
- inform you of matters relating to their legal fees;
- provide statements of accounts in a timely manner upon your request;
- undertake work in such a manner so as not to unnecessarily or improperly escalate their legal fees;
- complete any work on your behalf within a reasonable time;
- provide you competent representation;
- keep you reasonably informed of the progress of your matter;
- generally respond to your telephone calls, e-mails and messages promptly and keep appointments made with you;
- clearly explain proposals of settlements, other offers or positions taken by other parties which affect you;
- keep your information regarding your matter confidential, even after your lawyer stops representing you;
- act only in your best interests; and
- generally evaluate with you if the consequence of your matter justifies the expense or the risk involved.

Meeting Your Lawyer

Before you see your lawyer:

- ask your lawyer about the information that he or she needs in advance and then proceed to gather as much of it as you can;
- list the events as they happened;

- collate all important papers and supporting documents;
- list the names, addresses, and telephone numbers of everyone involved in your matter; and
- list the questions or issues you wish to discuss with your lawyer during the meeting.

If you have all the necessary information available in an organised manner, you are likely to spend less time at the meeting with your lawyer, which would reduce time costs.

To avoid future disputes, clarify the likely legal fees involved. Enter into a proper fee agreement (preferably in writing) that sets out these charges clearly. Inform your lawyer in advance of any budgetary constraint on your part. Lawyers usually charge their clients based on the time that they spend working on their matters (i.e. by hourly rates). These rates will generally be fixed within the law firm, with more experienced lawyers charging higher rates than less experienced lawyers. Some lawyers may be willing to assist you on a fixed-fee basis (i.e. they agree to charge you a fixed sum, no matter how much time they actually spend on the work), but this would be subject to negotiation between you and your lawyer. Also note that if you and your business are based entirely in Singapore, a lawyer might charge goods and services tax at the rate of seven per cent (7%) as well on his or her services rendered, which is a potential cost you should take into account, and clarify with your lawyer.

When you meet your lawyer:

- tell the lawyer everything important;
- answer your lawyer's questions fully, even if you may not understand the purpose of the question at the time; and
- ask questions to clear all your doubts.

A full and thorough discussion of the issues will help the lawyer give you a realistic expectation of the prospects for success in what you are hoping to achieve, as well as a realistic estimate of the fees you can expect to pay should you proceed. Be mindful that your lawyer may not be able to give you complete and comprehensive advice at the first meeting. The law changes often, and your lawyer may need to first check on new laws or on decisions made by the Court.

Working with Your Lawyer after the First Meeting

Arrange to correspond and have follow-up meetings with your lawyer at agreed times. Ask for copies of correspondence and documents filed in

Court or regulatory bodies if relevant, and if you do not understand the documents, have your lawyer explain these.

Be honest with your lawyer

It is difficult for your lawyer to give you the best advice if you do not fully disclose details of your matter and documents as early as possible and as soon as new issues arise.

Manage your expectations

Your lawyer is not in a position to guarantee that you will succeed, as many factors are beyond your lawyer's control. In litigation, the final decision is with the Court. Always evaluate your case with your lawyer at regular intervals and keep an open mind. Remember, your lawyer is not a judge or government authority.

Control your legal cost

Although you need to keep your lawyer fully informed of your matter, do remember that your lawyer may charge accordingly for his or her time spent on your matter. Focus your communication with your lawyer on the essential facts and information of your matter. Also, you may want to ask for regular fee updates, if the matter is expected to take some time to resolve (For example, ask your lawyer to update you on the costs incurred at the end of each week, or when a certain dollar amount has been exceeded).

Legal Fees

Your lawyer is entitled to charge fair and reasonable fees for legal work done on your behalf. As no two (2) matters are completely alike and some matters require more time and expertise to resolve, fees may vary between clients and cases. Legal expenses will generally comprise fees and disbursements. Disbursements are out-of-pocket expenses, and can include costs for filing and serving documents, long-distance calls, meals, photocopying, subpoena fees (i.e. for summoning another person to Court), and medical or other reports.

It is important that you speak to your lawyer about your expectations on the scope of work you require your lawyer to perform, because lawyers have different ways of calculating fees, depending on the types of services required and the lawyer's billing practices. The usual methods are:

1. *Hourly rate*

   This is the usual way of billing, especially for a Court case. The amount of time for which you will require your lawyer's services, will not be known at the outset.

2. *Fixed rate*

   This method may be used in matters where it is reasonably straight forward and predictably measured. The fee is a fixed amount regardless of the amount of time actually spent by the lawyer working on the matter. This method may be suitable in matters which are more predictably measured.

It is preferable to enter a written fee agreement at the outset. Note that lawyers are not permitted to enter into contingency fee agreements in contentious matters where the lawyer does not receive any fees if the client's claim does not succeed; but if the claim succeeds, the lawyer receives a percentage of the money recovered or a share in the subject matter of the dispute.

For civil matters in Court, your lawyer will explain to you:

- that you are personally liable for payment of your own legal fees to your lawyer;
- if you lose, you may have to pay part of your opponent's legal fees as well as your own;
- if you win, your opponent may not be ordered to pay the full amount of your legal fees and may not be able to pay what has been ordered; and
- the circumstances under which a lawyer can be discharged.

Your lawyer may ask you to pay a deposit before starting work on your matter. This money is meant to meet expected costs and disbursements. If the deposit is not completely used, the lawyer will refund you the remaining amount.

You should always ask for a receipt from the law practice for monies you have paid. This should indicate if the money is paid into the law practice's client account for your benefit (e.g. monies held on trust for you for specified purposes) or is paid into the law practice's office account (e.g. the monies were paid to settle a bill from the law practice).

Disputes Over Fees

The Law Society offers a legal costs dispute resolution scheme, known as "cost dispute resolve", to assist lawyers, their clients and third parties to resolve disputes on legal costs amicably and economically. The scheme provides for mediation as the first step to resolve such disputes. If mediation is unsuccessful, parties can move on to the



"Repeat after me: I solemnly swear to pay the bill, the whole bill and nothing but the bill."

simple and expedited arbitration process. More information on the cost dispute resolve and the applicable rules can be found at the Law Society's website (http://www.lawsociety.org.sg/).

Discharging Your Lawyer's Services

You may change your lawyer at any time. However, you should pay any outstanding costs to your current lawyer before engaging another lawyer unless there are exceptional reasons for not doing so. Where the outstanding fees of the current lawyer are not agreed or paid, that lawyer is entitled to request an undertaking that it retains the property of your case file, a lien.

Your lawyer can discharge himself or herself if:

1. his or her discharge does not cause significant harm to your interest and you are fully informed of the consequences and voluntarily assent to it;
2. your lawyer reasonably believes that continued engagement in the case or matter would likely have a serious adverse effect upon his or her health;

3. you breach an agreement with your lawyer regarding fees or expenses to be paid or regarding your conduct;
4. you make material misrepresentations about the facts of the case or matter to your lawyer;
5. your lawyer has an interest in the case or matter which is adverse to your interest;
6. such action is necessary to avoid contravention by your lawyer of any legislation; or
7. any other good cause exists.

If your lawyer discharges himself or herself, he or she has to take reasonable care to avoid foreseeable harm to you, including:

1. giving due notice to you;
2. allowing reasonable time for substitution of a new lawyer;
3. co-operating with your new lawyer; and
4. subject to the satisfaction of any lien your lawyer may have, paying to you any money and handing over all papers and property that you are entitled to.

Pro Bono Legal Assistance

"Laws are spider webs through which the big flies pass and the little ones get caught."

– Honore de Balzac

If you do not have the finances to engage a lawyer, fret not! There are a number of organisations which provide free legal information and assistance to the community, including Law Society's Pro Bono Services ("**LSPBS**").

For individuals

Community legal clinics

The Community Legal Clinics assist Singaporeans and permanent residents facing legal issues on personal matters (investment, business and professional matters are not covered) and have never sought legal advice before, and/or are unable afford a lawyer. At the clinics, applicants receive general advice and guidance on personal matters in a 20-minute, one-to-one consultation session with a qualified lawyer. It is the first port of call to seek free basic legal advice and information.

The clinics take place every Mondays to Thursdays, 7 pm to 9 pm (excluding public holidays and eve of public holidays), at the following locations shown in Table 19.

Table 19. Location and timing of Community Legal Clinics

Monday	**North West District** Woodlands Civic Centre #06-13 900 South Woodlands Drive Singapore 730900
Tuesday	**South East District** Singapore Post Centre #12-02 10 Eunos Road 8 Singapore 408600
Wednesday	**South West District** The JTC Summit #26-06 8 Jurong Town Hall Road Singapore 609434
Thursday	**Central Singapore District** HDB Hub Via Biz Three Lift Lobby 1, #07-11 490 Lorong 6 Toa Payoh Singapore 310490

Do note, however, that the advice given at these sessions shall be as a matter of guidance and comfort only and is not intended to replace, substitute or supplement legal advice and legal action that may be needed in each case. The volunteer lawyers at the clinics will not be able to represent you or act for you.

To register or for more information

Registration is required before an appointment may be made for consultation at the Community Legal Clinic.

To register for an appointment, you may choose to:

- Call us at 6536 0650;
- Send an e-mail to ProBonoServices@lawsoc.org.sg; or
- Speak to our officer directly at the Community Justice Centre located at Level 1, The State Courts of Singapore.

In the event that you are unable to get an appointment at the Community Legal Clinics, you may wish to consult the other clinics listed on our website at http://probono.lawsociety.org.sg/Pages/Community-Legal-Clinic.aspx.

For community organisations

Charitable or not-for-profit arts organisations may qualify for pro bono legal advice and assistance on corporate transactional matters.

Community Organisations Clinics ("COC"s)

LSPBS runs COCs to assist organisations in Singapore with an objective to meet community concerns, providing basic legal advice on operational issues.

Applicants must be:

1. A social enterprise or non-profit organisation (e.g. a charity or voluntary welfare organisation) based in Singapore;
2. Geared towards meeting community concerns or needs (i.e. beneficial to the community in Singapore as a whole, and not confined to sectional interests or group of persons based on race, creed, belief or religion); and
3. In need of basic legal advice and information on operational issues.

Each session usually lasts for about 45 minutes. Advice given is of a general and preliminary nature. The COCs do not offer legal representation to the applicants, although LSPBS may be able to assist with providing you information on how to engage a lawyer formally.

Project Law Help

LSPBS' Project Law Help initiative matches eligible community-serving organisations with law firms that are willing to provide free non-litigation commercial legal services.

These legal services could include:

- Corporate law (e.g. advice on contracts with suppliers, indemnity agreements for corporate sponsors, drafting pledges for donors);
- Employment law (e.g. drafting or reviewing employment contracts);
- Intellectual property law (e.g. advice on copyright, data protection, website use);
- Property law (e.g. advice on lease terms); and
- Other legal matters not involving Court litigation advice or representation.

Applicants must be:

- A local social enterprise or non-profit organisation (e.g. a charity or voluntary welfare organisation) based in Singapore;
- Geared towards meeting community concerns or needs (i.e. beneficial to the community in Singapore as a whole, and

not confined to sectional interests or group of persons based on race, creed, belief or religion);
- In need of legal advice or representation for a corporate nonlitigation matter, or transaction concerning the organisation; and
- With limited or no financial resources to pay for such legal advice or representation.

Successful applicants work directly with the law firm assigned, with the assurance that all legal matters will be handled in professional confidence by the volunteer law practice. Do note that eligibility for Project Law Help involves the application by LSPBS of a "means test" to determine the financial status of applicants. To this end, you would need to forward certain financial information in respect of your social enterprise to LSPBS, in order for this determination to be made. Do rest assured that all such information forwarded will be kept confidential.

To register or for more information

Telephone: 6536 0650
E-mail: AssistNPOs@lawsoc.org.sg
Website: http://probono.lawsociety.org.sg

Other Useful Resources

Legal Help: www.legalhelp.com.sg

Intellectual Property Office of Singapore's Intellectual Property Clinics:
https://www.ipos.gov.sg/e-services



"Why did I come here? Well, it did say 'Pro-Bono' on your front door..."

APPENDICES

Sample Contract Clauses

Developed by Mr Ng Joo Khin of Morgan Lewis Stamford LLC

Topic	Purpose	Sample Clause
With whom he or she is contracting with – who bears the responsibility when bargain is not met	**Setting out the parties to the agreement** Generally situated at the beginning of an agreement, right after the cover page (if there is one). This recital sets out the parties to the contract, usually including details such as NRIC/passport/registration number and addresses to better identify the parties.	***THIS AGREEMENT*** *("**Agreement**") is made on [insert date].* ***BETWEEN**: -* *(1) [**insert name of party**] (Company Number: [insert]), a company incorporated in [insert country] with its registered office at [insert address] ("**Party A**");* ***AND*** *(2) [**insert name of party**] (NRIC/Passport No.: [insert]), of [insert address] (the "**Party B**"),* *(each, a "**Party**", collectively the "**Parties**").*
	Exclusion of third parties Often used to prevent the statutory exceptions to the rule of privity from applying by expressly excluding third parties.	*A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any of its terms.*
The extent and limits of his or her responsibilities and liabilities	**Limitation of liability** Used to contractually limit the amount of liability one or more parties may incur for breaches of the contract. The limit is usually set based on an absolute amount or as a percentage of the value of the contract.	*The Contractor's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to fifty (50) per cent of the sum of the total Contract Price.*

Topic	Purpose	Sample Clause
	No liability for indirect losses Generally situated at the beginning of an agreement, right after the cover page (if there is one). This recital sets out the parties to the contract, usually including details such as NRIC/passport/registration number and addresses to better identify the parties.	*Neither party shall have any liability for breach of this Agreement for (whether actual or prospective) any loss of expected future business, exemplary damages or consequential or indirect losses.*
	Cumulative rights Clarifies that the rights and remedies set out in the agreement are cumulative and may be exercised multiple times, and are in addition to their remedies under general law.	*The rights and remedies of the Parties under or pursuant to this Agreement are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under general law.*
The scope of his or her duties	**Provision of services** Used for contracts for provision of services. Where the scope of work is complex or numerous, this is often set out in a schedule to avoid cluttering up the body of the agreement. Please note that clauses setting out the scope of duties may vary widely depending on the type of contract and the commercial intentions of the parties.	*The Contractor agrees to provide to the Purchaser the Services to the Purchaser set out in the Schedule, and shall in connection with the provision of such Services carry out such instructions and directions as may be issued by the Purchaser from time to time in every respect to the reasonable satisfaction of the Purchaser and in compliance with any relevant industry standards and all applicable legal and regulatory requirements, and without undue disruption to the business and operations of the Purchaser.*

Topic	Purpose	Sample Clause
The time frame within which to perform such duties	**Contracts for a specific term** Used for contracts for a specific term.	*This Agreement shall commence on the Effective Date and continue for the Term, unless earlier terminated as provided for herein.*
	Contracts for delivery of goods or services Used for contracts for delivery of goods and services on an ad hoc basis, e.g. pursuant to purchase orders. The purchase orders often set out additional details specific to each order placed.	*With respect to each Purchase Order, delivery shall be made at such date(s), time(s) and location(s) in accordance with the instructions of the Purchaser set out in the Purchase Order, and at the expense of the Contractor.*
The remuneration entitlement, compensation and share of benefits, gains or profits as well as the payment terms	**Lump sum consideration** Used when the purchase price has already been determined and consists of a single lump sum payment.	*The Vendors hereby agree to sell as the legal and beneficial owner, and the Purchaser, in full reliance upon the representations, warranties, undertakings and indemnities by the Vendors in this Agreement, hereby agree to purchase, the Sale Shares free from all or any Encumbrance for the purchase price of SGD [insert price] subject to the terms and conditions contained herein.*
	Employee remuneration Used for setting out remuneration of employees.	*Your annual salary of SGD [insert amount] will be paid monthly in accordance with customary payroll practices and procedures, subject to applicable law.*
	Ad hoc payment for good or services Used when the price has not yet been determined and will be set out in future purchase orders.	*Unless otherwise agreed as between the parties, the Purchaser shall, within sixty (60) days of the successful commissioning of the Equipment or part thereof, and upon the presentation by the Contractor of the commercial invoice(s), delivery note(s) and such other documents as may be required by the Purchaser, pay the Contract Price for the delivery of the Equipment.*
	Mode of payment Used to specific the mode of payment.	*Payments made by the Purchaser to the Contractor will be by way of cheque.*

Topic	Purpose	Sample Clause
The recourse available when the other party defaults or when relationships sour	**Court resolution** For dispute resolution by Court action.	*Each party hereby irrevocably submits to the non-exclusive jurisdiction of the Courts of Singapore.*
	Arbitration For dispute resolution by arbitration.	*Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.* *The seat of the arbitration shall be Singapore.* *The Tribunal shall consist of three (3) arbitrator(s).* *The language of the arbitration shall be English.*
	Mediation - Arbitration For dispute resolution by arbitration and mediation.	*The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the dispute through mediation at the Singapore International Mediation Centre ("SIMC"), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.*

Topic	Purpose	Sample Clause
	Liquidated damages Used to designate the amount of damages during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance).	*Without prejudice to the Purchaser's rights above, but in the event of the Purchaser accepting late delivery, installation and/or commissioning of Equipment from the Contractor, the Purchaser reserves the right to require the Contractor to pay or to deduct from the Contract Price liquidated damages (and not as a penalty), a sum to be calculated at the rate of one-half per cent (1/2%) of the Contract Price for the late delivery, installation and/or commissioning of the Equipment or one-half per cent (1/2%) of the cost of the Equipment if any parts or components relating to the Equipment are subject to delay, for each day which may elapse between the date of delivery, installation and/or commissioning originally agreed to by the parties and the actual date of delivery, installation and/or commissioning, up to a maximum of ten per cent (10%) of the Contract Price for the delay of the Equipment or maximum of ten per cent (10%) of the Equipment price for the delay of any parts or components.* *The Contractor acknowledges and agrees that the sum stipulated above constitutes a genuine pre-estimate by the Contractor and the Purchaser of the potential loss that would be suffered by the Purchaser resulting from or in connection with the Contractor's late delivery, taking into account all relevant considerations, including without limitation the disruptions caused to the Purchaser's operations and the possible costs in sourcing for substitute sources before the late delivery was effected.*

Topic	Purpose	Sample Clause
The circumstances under which he or she can walk away from the bargain legitimately	**Termination with notice** To allow for termination by either party by giving notice to the other party(ies).	*Either the Supplier or the Recipient may at any time terminate the provision of any or all of the Services by giving to the other party not less than one month's notice in writing.*
	Immediate termination events To allow for termination by either party upon occurrence of certain specific events.	*Either the Supplier or the Recipient shall be entitled to terminate this agreement with immediate effect in respect of any or all of the Services by giving written notice to the other party if:* *(a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; or* *(b) the other party commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after receipt of notice in writing requiring it to do so; or* *(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts; or* *(d) the other party is subject to any liquidation, winding up or reconstruction event; or* *(e) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or* *(f) there is a change of control of the other party other; or* *(g) any Force Majeure Event prevents the other party from performing its obligations under this agreement for a continuous period of thirty (30) days provided that where applicable the agreement shall only be terminated in respect of the Services affected by the Force Majeure Event.*

Sample Intellectual Property Clauses

Developed by the Intellectual Property Office of Singapore, with assistance from Ms Teo Yi-Ling, Senior Faculty & Legal Counsel, IP Academy and Ms Ashley Chew, National University of Singapore Law Class of 2015.

Topic	Purpose	Sample Clause
Ownership of intellectual property	**Acknowledgment of ownership of copyright** To be used in the situation where the parties which confirm that the ownership of the copyright work remains the property of the creator of the copyright.	*All copyright any other rights in the **Work** provided by the **Creator** shall remain the sole and exclusive property of the **Creator** and this Agreement does not purport to grant, assign, or transfer any rights to any other party.*
	Assignment of copyright from the creator to another party To be used in the situation where the creator of the copyright wishes to transfer the ownership of the copyright work to another party (also known as the "assignee").	*The **Creator** assigns to the **Assignee** all copyright, title, interest and all other rights (including all vested future and contingent interest and rights) in and to the **Work**, conferred under the laws of any country throughout the world (whether currently in force or which may hereafter be enacted, promulgated or passed) for the use and benefit of the **Assignee** absolutely for the full period or periods of copyright protection including all reversions, renewals and extensions, created or provided by the laws of any country throughout the world.*
	Licensing of copyright from one party to another To be used in the situation where the creator of the copyright wishes to grant permission or authorise another party (also known as the "licensee") to use any or all of the copyright work. The parties should decide if the license is an exclusive or non-exclusive one.	*Exclusive license* *In consideration of the **Royalty**, the **Creator** grants to the **Licensee**, the sole and exclusive right to publish, exploit and license the **Work** and any parts thereof in all media including but not limited to all methods of publication and reproduction including hardback, paperback, serialisation, translations, anthologies, quotations, mechanical reproduction, radio, theatre, film, television merchandising and the Internet in the **Territory** for the **Duration**.*

Topic	Purpose	Sample Clause
		Non-exclusive license *In consideration of the **Royalty**, the **Creator** grants to the **Licensee**, a non-exclusive, worldwide, perpetual, irrevocable right to publish, exploit and license the **Work** and any parts thereof in all media including but not limited to all methods of publication and reproduction including hardback, paperback, serialisation, translations, anthologies, quotations, mechanical reproduction, radio, theatre, film, television merchandising and the Internet.*
Credit/ acknowledgement	To provide for credit/ acknowledgment to be given to the creator of the copyright work.	*The **Creator** shall be credited in all promotional and advertising collaterals on any media in the **Territory**, acknowledging that the Work was originally created by the **Creator**.*
Representation and warranties Permission to use materials owned by third parties	To provide assurance that the creator's copyright work is original, and where materials from third parties have been incorporated in the copyright work, the necessary permissions have been obtained.	*The **Creator** warrants that all the Work created under the Agreement shall be the Creator's original work. The **Creator** further warrants that it has procured the necessary rights from third parties to use any third party materials in respect of the Work, and shall not infringe upon any third parties' rights, including proprietary rights.*

Topic	Purpose	Sample Clause
Confidentiality/ Non-disclosure	To ensure that parties are bound by obligations of confidentiality.	*The **Parties** may receive, in the course of this Agreement, information which is confidential or which constitutes trade secrets with respect to the operation and business of the other **Party**. Such information may include, business plans, financial information, customer data, computer programs, proprietary software or information regarding other projects ("**Confidential Information**").* *Neither **Party** shall disclose the Confidential Information to any third party, except to employees, professional legal advisors and accountants of the parties on a "need-to-know" basis.* *The confidentiality obligations shall not apply if the Confidential Information becomes generally available to the public through no fault of the **Parties**, or if disclosure of such information is required for the proper performance and discharge any Parties' obligations and responsibilities under this Agreement or by virtue of any law or a Court order.* *All records and other materials received by either **Party** which belong to the other **Party** shall be returned upon termination or expiry of this Agreement. The obligation of confidentiality shall survive the termination or expiry of this Agreement.*

Topic	Purpose	Sample Clause
Termination	To provide for the situations where the parties may terminate the agreement.	*This Agreement may be terminated by giving written notice to the other **Party** who has breached this Agreement or defaulted in the following circumstances:* *(a) where the **Company** has failed to account or make payments to the **Creator** as required under this Agreement;* *(b) where either **Party** has committed a serious breach of its obligations under this Agreement unless such party rectifies the position, as far as reasonably possible, within one week from the date where the breach was first discovered; or* *(c) where any proceeding is commenced or an order is made or a resolution is passed for the dissolution, winding-up or judicial management of either **Party**, or for the appointment of a liquidator, receiver, judicial manager, administrator, trustee or similar officer of either **Party** on any part or all of its assets or business.*

NATIONAL TRADES UNION CONGRESS

The National Trades Union Congress (NTUC) is a national confederation of trade unions as well as a network of professional associations and partners across all sectors in Singapore. NTUC's objectives are to help Singapore stay competitive and working people remain employable for life; to enhance the social status and well-being of our members and working people; and to build a strong, responsible and caring labour movement. NTUC's vision is to be an inclusive labour movement for all collars, ages and nationalities. NTUC is at the heart of the Labour Movement, which comprises 57 affiliated unions, two affiliated taxi association, 10 social enterprises, six related organisations as well as a growing ecosystem of U Associates and enterprise partners. For more details on NTUC, please visit our website at www.ntuc.org.sg

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Creative Media and Publishing Union

About Us

The Creative Media and Publishing Union (CMPU) was formed on 1 January 2015. We are an industry-wide union which represents working people in the creative media, publishing and journalism sectors.

We are an affiliated union of the NTUC which strives to create a brighter future for all our members.

What We Do?

We are here to look after the interests of our members and provide support for their workplace needs. In addition, we have members who are freelance professionals in the creative media sector and we work with them to advance their interests. We represent the voice of the creative professionals through advocacy and outreach.

For our members in unionised companies, we work with their management on the terms and conditions of their employment, as well as negotiate for better benefits, wage increments and bonuses.

Apart from the array of special privileges and social benefits that come with the NTUC union membership, CMPU also provide perks exclusively for our members.

Our perks include participation in exclusive outings such as CMPU Members' Night, CMPU Family Movie Day, yearly souvenir gifts and hospitalisation benefits & hardship grants in difficult times.

Members of CMPU also receive invitations to networking sessions, events and talks specially tailored for creative professionals. The events and talks will feature esteemed creative industry speakers and create networking opportunities for various industry leaders and creative professionals during interactive sharing sessions.

Whether you are a graphic animator, screen writer, digital gaming developer or freelance professional in the creative media sector, CPMU has specialised events and programmes relevant to your interests as a creative professional.

Who Can be a Member?
Membership of the union is open to persons who are working for printing and publishing companies, and digital and new media companies. It is also open to all journalists, including photographers and artists, who are employed in editorial or journalistic work in newspapers, news agencies, news film production firms, radio and television, infographic, digital and any other new media journalism.

Join Us
Apply online via http://bit.ly/CMPUSignup

Contact Us
NTUC Centre
1 Marina Boulevard, Level 10
One Marina Boulevard, Singapore 018989
Tel: 6213 8510 Fax: 6327 3753
E-mail: cmpu@ntuc.org.sg
Facebook: https://www.facebook.com/CMPUnion/

Singapore Union of Broadcasting Employees



About Us

The Singapore Union of Broadcasting Employees (SUBE) was formed in 1981. We are an industry-wide union which represents working people in the broadcasting, digital media, film and television sector. We are an affiliated union of the National Trades Union Congress (NTUC) which strives to create a better and progressive future for all our members.

What We Do?

We protect the interests of our members and provide assistance for their workplace needs. For unionised companies, we believe in maintaining harmonious labour-management relations to achieve outcomes beneficial to both employers and employees. We also negotiate for better workplace terms and conditions for our members.

Through the NTUC U Network, members can attend seminars and talks to further advance their knowledge and gain more insights into the industry. There are also masterclasses and networking opportunities for media professionals. All these at heavily subsidised rates or complimentary entry. Union members are eligible for 50 per cent unfunded course fee support for up to $250 each year when they sign up for courses supported under the Union Training Assistance Programme (UTAP).

Through the NTUC network, members can enhance their employability as well as gain access to more job opportunities.

On top of the general NTUC's benefits, SUBE members are also eligible for exclusive benefits such as:

- Subsidised events such as Members' Night
- Biennial souvenirs
- Welfare benefits and grants (subject to terms and conditions)

Who Can be a Member?

Union membership is open to persons who are working in the broadcasting, digital media, film and television sector.

Join Us

Apply online via http://bit.ly/SUBESignup

Contact Us
Mediacorp Campus
1 Stars Avenue, Level 3
Room 03-02, Singapore 138507
Tel: 6256 6539
E-mail: sube@ntuc.org.sg
Facebook: https//www.facebook.com/SUBE.sg

U Creative

About Us
We are a community for creative professionals and freelancers.

What We Do?
U Creative is an online community of creative professionals in Singapore. It is created as a platform for exchange of ideas, networking with fellow creative professionals and discussion on issues pertaining to the creative industry in Singapore.

The motivation for this community arises from the desire to empower the creative workforce with ability to chart their own career path, regardless of which creative industry they are in, equipping them with the skills and knowledge to prepare them for the future.

Through our online platform, we seek to provide creative professionals with an opportunity to strengthen in unity. We hope to educate creative professionals on their rights and profession-related matters.

Join Us
Join the U Creative community at:http://bit.ly/UNetworkSignup if you are from the creative industry or keen to be part of the U Creative community.

Contact us
E-mail: ucreative@ntuc.org.sg
Like us on Facebook: https://www.facebook.com/UCreativeSG/

U FSE (Freelancers and Self-employed)



About Us

We at the Labour Movement, know that freelancers and the self-employed are a growing group of workers in Singapore who choose to explore opportunities on their own.

While there is excitement, freedom and a varied job platter in what you do as a freelancer, we also understand that you face many challenges in every day dealings.

And this is where the NTUC-led U FSE (freelancers and self-employed) comes in. Our strong and fast expanding network can help strengthen your income security, skills mastery and open up new opportunities.

What We Do?

Did you know that the Ministry of Manpower has set up the Tripartite Taskforce for Freelancers to look after your interests? NTUC will work with the Government and industry partners to identify practical and feasible solutions, including legislations, to better protect your interests.

We are also working with partners such as service aggregators, NTUC's e2i (Employment and Employability Institute) and NTUC LearningHub to offer targeted programmes that help you deepen your knowledge and skills. Currently, we have on-going collaborations with some 30 partners.

Join Us

Join the U FSE community and be part of a growing freelance ecosystem at: www.freelanceXchange

Contact Us

E-mail: fseu@ntuc.org.sg
Website: www.freelanceXchange.sg
Facebook: www.facebook.com/freelanceXchange

Like other creative industries, there are many freelancers in the media sector. In line with the Ministry of Manpower's broader efforts to encourage fair and progressive workplaces, IMDA has initiatives to provide better support for freelancers. These initiatives include:

A. The Tripartite Standard on Procurement of Services from Media Freelancers ("TS Media Freelancers")

The standard sets out to promote stronger working relationships between companies and media freelancers. By implementing these standards, companies will distinguish themselves as progressive hirers that freelancers look for.

The following four actions that are stipulated in the TS Media Freelancers are:

1. **Written Contract**
   Written contracts are agreed upon and acknowledged by both parties before media freelancers start their service. Key contract terms to be included are outlined in the standard.

2. **Timely Payment**
   Media freelancers are paid based on the agreed payment period when payment milestones are met (as stipulated in the written contract).

3. **Dispute Resolution**
   Disputes between parties are resolved via negotiation and mediation first before pursuing other dispute resolution channels.

4. **Insurance**
   When media freelancers are required to offer their services on set and/or location specified by the company, they must be covered in the companies' insurance for production equipment, commercial general liability and work-related accident insurance.

The full text of the TS Media Freelancers is set out at the end of this Appendix.

How does it work?

Companies

Companies can adopt the TS Media Freelancers at any time, in 2 simple steps:

1. Assess if the company has met the specifications
2. Adopt the standard at www.tafep.sg/adopt-tripartite-standards

Media Freelancers

While media freelancers are not required to sign up, they are encouraged to adopt the following industry best practices:

1. Sign a contract with clear terms of service before starting the service
2. Submit invoice upon meeting the agreed deliverables, in a timely manner
3. Explore negotiation and mediation first to resolve disputes
4. Get adequate personal insurance coverage

For more information, visit www.imtalent.sg/TSMediaFreelancers.

B. Subsidied Mediation Service

In partnership with the Singapore Mediation Centre (SMC), IMDA will also provide subsidies to media companies and media freelancers for them to resolve their disputes through mediation at SMC, on issues such as late or non-payment for services rendered. IMDA will subsidise 60% of the cost of mediation services at the SMC for each media freelancer and company involved. The subsidy will be capped at $500 for Small Case Mediation (for dispute quantum of up to $60,000) and $2,500 for Commercial Mediation (for dispute quantum above $60,000). For more information, visit www.imtalent.sg/subsidisedmediationservice.

C. Talent Assistance Scheme

Media freelancers can tap on the Talent Assistance Scheme to take up courses to deepen their capabilities. For more information, visit www.imda.gov.sg/industry-development/programmes-and-grants/talent-assistance.

Full text for TS Media Freelancers

1. Written Contract

A written contract between contracting parties are agreed upon and acknowledged before the commencement of the service rendered. The written contract includes the following basic contract terms:

i. Names of contracting parties;
ii. Nature of services to be provided by the media freelancer/s;
    a) Details of services that include deliverables; duration; location
iii. Payment
    a) What is included in the fee
    b) Payment milestones with clearly specified payment period;
    c) Amount of interest charged for late payment calculated from the agreed payment milestone upon the company's receipt of the invoice from the media freelancer/s.
iv. How both parties can vary or terminate the contract terms;
v. What information is to be kept confidential;
vi. Disputes will be settled via negotiation and mediation first;
vii. Where relevant, clear terms on ownership of intellectual property.

2. Timely Payment

Media freelancers are paid in accordance with the agreed payment period upon payment milestones being met as stipulated in the written contract. If no payment milestone dates are provided in the contract, the media freelancers are paid, no later than 45 days upon the company's receipt of the invoice from the media freelancers, upon completion of agreed deliverables.

3. Dispute Resolution

If any disputes arise in relation to the provision of service by the media freelancers, reasonable efforts are made to resolve the dispute via negotiation and mediation first. Any agreement reached during negotiation and mediation will be recorded in a written settlement agreement and acknowledged by the parties involved.

4. Insurance

Where media freelancers are required to offer their services on set and/or location specified by the company, they are covered in the company's insurance. A suitable liability coverage for the insurance are purchased to include:

i. Production Equipment Insurance that covers equipment operated by media freelancers either owned by the company and/or rented to the company;
    a) Covers against all risks of direct physical loss, damage or destruction to equipment such as cameras, electrical communications, sound, lighting and grip equipment that are owned by or rented to the company.

ii. Commercial General Liability;
    a) Covers against claims for bodily injury (of other parties, e.g. passers-by who are injured by production equipment during production that was operated by media freelancers) or for property damage, liability arising during the production.
iii. Work-related Personal Accident insurance;
    a) Covers against claims for death, total and permanent disability and medical expenses due to work-related accidents for media freelancers.

Glossary

A Media Freelancer is:

i. A person who does not have a contract of service with an employer AND
ii. Operates his/her own media service business or trade* without hiring any employees; AND
iii. He/She negotiates his/her terms and benefits with clients, and it is clearly stated in the contract that it is his/her service as an individual that is being procured for all intents and purposes; AND
iv. He/ She can either operate as individuals; OR have an Accounting and Corporate Regulatory Authority of Singapore (ACRA) - registered entity such as sole proprietorships, Limited Liability Partnerships, Limited Liability Companies, Partnerships, and companies, where such entity does not hire any employees.

* media service business or trade includes design, development, production, operation, distribution, sale and/or marketing of media.

JOINTLY DEVELOPED BY: SUPPORTED BY:

DesignSingapore Council



About DesignSingapore Council

DesignSingapore Council's (Dsg) vision is for Singapore to be an innovation-driven economy and a loveable city through design by 2025. As the national agency that promotes design, our mission is to develop the design sector, help Singapore use design for innovation and growth, and make life better in this UNESCO Creative City of Design. Dsg is a division of the Ministry of Communications and Information.

For more information, please visit Dsg's website: www.designsingapore.org.

List of Resource Materials for Designers

- Registered Design Regime:
  http://bit.ly/2rCYsDg
- Intellectual Property for Inventors, Creators and Owners:
  http://bit.ly/2D1dPKd
- American Institute of Graphic Arts Standard Form of Agreement for Design Services:
  http://www.aiga.org/standard-agreement/
- American Institute of Graphic Arts Design Business and Ethics:
  http://www.aiga.org/design-business-and-ethics/
- Guide to Singapore Procurement:
  http://bit.ly/2F3nhKa; http://bit.ly/2BsHAi4

Note to Designers

Many government contracts (e.g. invitations to quote, invitations to tender and requests for proposals) will state the intellectual property being procured. The intellectual property will typically be classified in one of the following categories:

- Supplier owned;
- Government owned; and
- Jointly owned.

Thus, designers should check on the intellectual property rights being procured and include the cost of it when providing a quote. Please refer to the above links for more information on government contracts.

Musicians Guild of Singapore

About Us

The Musicians Guild of Singapore is a professional body dedicated to supporting the career, livelihood, and professional development of musicians by creating and nurturing a community of shared values, community and personal empowerment. The Guild also aims to represent and serve as advocate for the music community in matters affecting the interests of musicians. Officially launched in April 2015, the Guild is a non-profit organisation and a recipient of the NAC's Seed Grant from 2014-2016. Its board of directors, currently chaired by National University of Singapore's Professor Bernard Tan, comprises a wide array of prominent leaders and personalities from the arts and entertainment sector. Its patron is ambassador-at-large Professor Tommy Koh. The diversity in leadership underscores the Guild's objectives to reach out to musicians from across the entire music ecosystem, regardless of musical genre and professional specialisation.

Membership and Benefits

The Guild offers three (3) types of paid memberships (Full; Associate; and Student), which are open to all musicians and persons involved in the music industry in Singapore. To date, the Guild has a growing membership from all corners of the music industry, thereby making it all-inclusive across all music genres and specialisations. Members enjoy an extensive range of tangible benefits, such as special discounts for both music and non-music related lifestyle products and services; access to jobs database for music¬¬-related opportunities in Singapore; professional development workshops, seminars and conferences at discounted rates; and legal support.

Legal Services

Legal support is a key pillar of the Guild's work. As a professional body that looks out for musicians' interest, it has partnered with legal firms to provide legal assistance to members through free or affordably-priced consultations for matters affecting musicians. Guidelines such as those for music industry contracts, as well as templates for agreements, have also been published exclusively for members who may download them from the Guild's website at their own convenience. Members may also readily tap on legal expertise via different channels such as clinics where

one-on-one consultation sessions are offered, Guild-organised talks and events, and ad-hoc inquiries. In May 2016, the Guild organised an interactive session on common contractual issues in performance, recording and music publishing. Attendees were also introduced to the latest guidelines on such issues. In addition, a talk on intellectual property and contract law for musicians was also arranged to educate and bring greater awareness to the application of intellectual property laws in the entertainment, art and media industries.

Advocacy

In performing its role as an advocate for musicians in general, the Guild participated in the recent copyright law public consultations in October 2016. It is also looking into feedback received about the Ministry of Education's arts and music instructors scheme.

Past Events – Highlights

The Guild has organised a comprehensive suite of events spanning songwriting forums, financial planning talks, and marketing seminars. Some highlights include:

- Financial Planning for Musicians;
- Sharing session with Stefanie Sun;
- Guild Connect and Jam Session;
- Songwriting in Singapore – Ideas and Inspiration;
- Talk Business with Syaheed Msbi;
- Digital Marketing for Musicians; and
- Talk by Phan Ming Yen: Bothering about Western Art Music and Empire in 19th Century Singapore.

Related links

- www.musicians.sg
- https://www.facebook.com/musiciansguildsg/

Screenwriters Association (Singapore)

SCREENWRITERS ASSOCIATION (SINGAPORE)

Our Vision

To raise the status and professionalism of screenwriters by emphasizing the importance of content development as the blueprint for TV, films and online media. In forming strategic partnerships with industry players, we will advocate best industry practices and nurture screenwriting as a profession by creating opportunities to showcase work, to upgrade skills, to collaborate and anetwork.

Key Activities and Events

2003: SAS flew in story guru Robert McKee for a 3-day story masterclass. The seminar attracted delegates from as far afield as Hong Kong and Korea.

2007 - 2009: SAS ran a number of free writing lectures at the Esplanade library.

2011 to present: SAS has worked with the film community and IMDA to protect the rights of freelancers. We have pushed for fairer payment terms and contracts (especially where it pertains to copyrights).

2012: SAS initiated a Writers Charter, where members pledged not to write for free.

2012: SAS organized a Pitch Masterclass, conducted by Lee Shinho, co-writer of the Korean box office hit The Chaser.

2014: SAS drafted a Code of Conduct for members, and circulated contract templates.

2015: SAS hosted European producers from Ties that Bind to a networking dinner, when they visited Singapore to attend ScreenSingapore.

A few months before that, the Association hosted SAAVA to a talk on the Ties That Bind producing programme, and the upcoming Southeast Asian Film Financing Forum (SAFF).

2016: SAS supported NTUC's Media Freelancers Fair.

2016, 2017: SAS supported the National Youth Film Awards, by offering free membership and writing workshops to the winners.

2017: SAS was commissioned by Infocomm Media Development Authority (IMDA) to conduct a half-day writing workshop for the public. The venue was sponsored by the national library.

SAS was also commissioned by IMDA to conduct a customized half-day writing workshop for IMDA officers.

The same year, SAS was awarded a 2-year contract by Workforce Singapore to manage a 3-month game writing workshop, part of a 6-month industrial attachment programme. SAS subsequently held a networking session for gaming companies and candidates, at Funan Showsuite. The event enjoyed support from IMDA as well.

SAS kicked off the game writing workshop with a 3-day masterclass in August. The course for full-time candidates, was successfully concluded with candidates pitching to industry experts in November.

SAS was one of the associations invited to provide feedback to IMDA and NTUC on the Tripartite Standards for the media.

SAS was invited by NTUC, Ministry of Manpower (MOM) and Singapore National Federation of Employers, to a survey and discussion on media freelancers.

SAS has also partnered with and supported Singapore Film Society's screenings of local films, by buying up blocks of tickets. Over the years, we have supported Girl In a Pinafore; Ilo Ilo; Pop Aye; In Time to Come, amongst others.

Membership Qualification and Rights

There are two tiers of membership:

a) Professional
   - Writer credit for at least 5 produced TV programmes in any genre (5 episodes of a TV series, or 5 one-off shows, or equivalent), telecast on free-to-air or cable; or
   - 1 produced feature film, advertised and screened at a public venue.

b) Associate
   - Writer credit for at least 1 produced TV programme, or 1 staged play or 1 short film, or equivalent. Work must have been advertised and screened on free to air or cable, or advertised and staged or screened at a public venue.

- Applicants with unproduced scripts that have won national or international prizes are also eligible.

Only members who are above 18 years of age shall have the right to vote and to hold office in the Association.

Application for Membership
A person wishing to join the Association should submit his particulars to the Secretary on a prescribed form.

The Committee will decide on the application for membership.

Annual subscriptions of $50.00 are payable. Any new member joining after May, will be charged $30 for the remainder of that year. Dues are payable in advance, in January of each year.
Industry professionals who are not screenwriters, but wish to support screenwriters, may also join SAS as a Friend.
For more information on SAS:
http://screenwriters.org.sg/
https://www.facebook.com/ScreenwritersAssociationSG/?ref=bookmarks

The Singapore Association of Motion Picture Professionals (SAMPP)

Our key focus is to provide a platform to promote dialogue, engagement and professional development for industry practitioners working in Film, Television and other new broadcast media in Singapore.

The big picture aim is to enable professionals to continually upgrade themselves, so that there may be more longevity to their careers and also more sustainability for the Singapore industry, even as jobs and media trends continually evolve.

Who We Are

Founder members include the best and brightest of our film and TV industry, such as awardwinning filmmakers Anthony Chen, Boo Junfeng, Tan Pin Pin, Chai Yee Wei, Lim Ting Li, Kat Goh, Dustin Lau and Jasmine Ng, and many others who have steadily contributed over the years.

What We Do

1. VOICE
   - forum for industry discussions
   - facilitate understanding and exchange on industry issues, perspectives, trends
   - interface with various organisations via this platform

2. AWARENESS / EDUCATION
   - Legal Clinics + Primer Sessions & Online Resources on: Legal Rights (understanding Contracts)/Insurance / CPF + Taxes
   - Professional development workshops and master classes
   - Professionals Networking and Sharing Sessions
   - Dispute Resolution through Mediation

3. STANDARDS ADVOCACY
   - Code of Best Practices for Media Practitioners
   - Collaboration and consultation with Media Schools
   - Guidance for new entrants to industry (fresh grads and interns)
   - Professionals portal + real-time job-matching app

Who We Work With

The working group behind SAMPP has already been steadily engaging with IMDA-MCI, NTUC, MOM, IPOS and the Law Society Pro Bono Services, and will continue to do so. We have consulted for and helped IMDA develop the newly-launched tripartite standards for the media industry, as well helped advise on media scholarship frameworks and other policy issues such as development grant schemes.

We have helped organise consultation and feedback sessions between industry and government on the Copyright Act review and the Films Act review.

We have been invited to participate on panels at the NTUC Media Freelancers Fair and others, and given presentations at the NTUC OTC Labour Leadership Institute's Labour Research Conference. Other consultation exercises include those facilitated by NTUC, Ministry of Manpower (MOM) and Singapore National Federation of Employers.

We have collaborative working affiliations with Screenwriters Association and Singapore Cinematographers Society.

We will also focus on producing a Code of Best Practices for Media Practitioners in various specialisations as a ground-up effort led by the working professionals themselves, and in dialogue with other associations.

We will collaborate and consult with the media schools, and help guide new entrants to the industry (fresh grads and interns).

Who Are Our Members

SAMPP will officially launch in 2018, and SAMPP's membership is open for application to motion picture professionals across the sectors (film+tv+digital content): this applies to all with above- and below-the-line screen credits. This is regardless of work status, of whether a freelancer, employee, employer, or company owner, as long as you are an industry professional based in Singapore.

How to Contact Us

www.sampp.org.sg
www.facebook.com/groups/SAMPP.sg
For more info: contact.sampp@gmail.com
Send membership queries to membership.sampp@gmail.com

About Law Society Pro Bono Services

Law Society Pro Bono Services ("**LSPBS**") is a registered charity with IPC status (UEN: 201700430E). It is an initiative by the Law Society to bring free legal assistance to those in need in our community. It is part of the Law Society's stated mission to ensure access to justice.

LSPBS' work is supported by volunteers who give generously and selflessly their time and expertise for the needy in the community, and by financial contributions from individual lawyers, law practices, private donors, and key stakeholders such as the Ministry of Law, the State Courts, the Singapore Academy of Law and various community partners.

Programmes run by LSPBS aim to:

- serve the community,
- support their volunteers, and
- assist or collaborate on pro bono initiatives with other agencies to deliver on the Law Society's mission to ensure access to justice.

LSPBS also runs on-going programmes aimed at delivering legal information to targeted members of the community, such as youths, elderly and employees. These initiatives comprise talks, information booklets, legal clinics and workshops and the like.

For more information on our services, please visit:
Website: http://probono.lawsociety.org.sg
Facebook: www.facebook.com/lawsocprobonoservices

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